

**Case Officer:** Bob Neville

**Applicant:** Rectory Homes Ltd

**Proposal:** Erection of 10 no. two storey residential dwellings with access off South Side including a new pedestrian footway, parking and garaging, landscaping and all enabling and ancillary works

**Ward:** Deddington

**Councillors:** Cllr Hugo Brown  
Cllr Mike Kerford-Byrnes  
Cllr Bryn Williams

**Reason for Referral:** Major development (10no Dwellings)

**Expiry Date:** 9 April 2020

**Committee Date:** 12 March 2020

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

### **RECOMMENDATION: REFUSE PERMISSION**

#### **Proposal**

The application seeks full planning permission for the erection of 10no two storey residential dwellings on the edge of the village of Steeple Aston, with access off South Side. Proposals would also include a new pedestrian footway, parking and garaging, landscaping. Proposals would provide 2no 2-Bed, 5no 3-Bed, 1no 4-Bed and 2no 5-bed dwellings, constructed in a natural Cotswold stone finish walls under slate roofs

#### **Consultations**

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

- CDC Design and Conservation, CDC Ecology and CDC Strategic Housing

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

- Recreation & Leisure, Environmental Protection, Landscape Services, National Air Traffic Systems, Local Highways Authority, Lead Local Flood Authority, Archaeology, OCC Education and Thames Valley Police.

The following consultees are **in support** of the application:

- Steeple Aston Parish Council and Mid-Cherwell Neighbourhood Plan Forum

3 letters of objection have been received and no letters of support have been received.

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

In terms of site constraints, the application site sits adjacent the Steeple Aston Conservation Area. The site is within a Mineral Conservation Area and an area known to be affected by Radon Gas. There are records of a number of protected and notable species as being present within the vicinity of the site. A Public Right of Way runs from South Side east of the site and crosses open countryside south of the site.

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;
- Housing Density and Mix;
- Design and Impact on the Character of the Area;
- Highway Safety;
- Residential Amenity;
- Flood-risk and Drainage;
- Ecology and Biodiversity.

The report looks into the key planning issues in detail, and Officers conclude that the proposal is unacceptable for the following reasons:

1. The proposals represent residential development that would not make effective and efficient use of land or be of an appropriate housing mix that would meet the needs of the District;
2. By virtue of their siting, layout and design the proposals represent inappropriate development that would not contribute positively to an area's character and identity by creating or reinforcing local distinctiveness; detracting from the character and appearance of the adjacent Conservation Area and rural edge of village setting.
3. It has not been demonstrated that the proposals would not be to the detriment of protected species or their habitats and further that the proposals would result in a nett gain in biodiversity at the site.

**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 a largely undeveloped site located to the south western edge of Steeple Aston. The site previously appeared to include a number of agricultural buildings. However, these have largely been clear along with the extensive vegetation which previously covered the site. A commercial garage exists to the west of the site and residential properties exist to the north and east. To the south of the site is open countryside.

### **2. CONSTRAINTS**

- 2.1. The application site sits outside but adjacent to the Steeple Aston Conservation Area. The site is within a Mineral Conservation Area and an area known to be affected by Radon Gas. There are records of a number of protected and notable species as being present within the vicinity of the site. A Public Right of Way runs from South Side east of the site and crosses open countryside south of the site.

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

- 3.1. The application seeks full planning permission for the erection of 10no two storey residential dwellings on the edge of the village of Steeple Aston, with access off

South Side. Proposals would also include a new pedestrian footway, traffic calming measures, parking and garaging, landscaping. Proposals would provide 2no 2-Bed, 5no 3-Bed, 1no 4-Bed and 2no 5-bed dwellings, constructed in a natural Cotswold stone finish walls under slate roofs.

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

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

CHS.272/88 - (Outline) Three houses. Application refused on the grounds of constituting development beyond the built-up limits of the village, contrary to development plan, and resulting in detrimental impacts on visual amenity and an undesirable precedent being set.

17/02414/F - Erection of 6 no. two-storey residential dwellings with access off South Side, including parking and garaging, landscaping and all enabling and ancillary works. Application withdrawn following officers advising that the application was to be refused as inappropriate residential development beyond the built-up limits of the village.

18/01482/F - Erection of 6 no. two-storey residential dwellings with access off South Side, including parking and garaging, landscaping and all enabling and ancillary works. Application withdrawn by applicants for a reason unknown to officers.

19/01177/F - Erection of 10 no. two-storey residential dwellings with access off South Side, including a new pedestrian footway, parking and garaging, landscaping, and all enabling and ancillary works. Application withdrawn following officers raising significant concerns in relation to: the principle of development (lack of compliance with the provisions of the MCNP); inappropriate layout and housing type; lack of affordable housing; highway safety; ecology; lack of LAP provision and potential environmental health issues, given proximity of commercial garage adjacent and lack of appropriate assessment of potential impacts on residential amenity.

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

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

- 19/02090/PREAPP - Erection of 10 No two storey residential dwellings with access off South Side including a new pedestrian footway, parking and garaging, landscaping and all enabling and ancillary works.

5.2. Applicant advised that due to a lack of supporting information within the submitted scheme that a definitive response could not be given as to the acceptability of the proposals and whether such an application would be supported. Whilst general support for the principle of developing the site was offered, a number of issues that needed to be satisfactorily resolved were highlighted to the applicant; including: siting, design and materials; highways; ecology; lack of affordable housing; lack of open space provision; drainage; residential amenity. Response issued 12/11/2019.

#### **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 **12 February 2020**, although

comments received after this date and before finalising this report have also been taken into account.

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

- Highway safety issues;
  - poor visibility at access to the site;
  - visibility affected by sunlight;
  - unsafe pedestrian link to the village;
  - proposed footpath should be widened;
  - the proposed build out should be relocated;
  - Existing highway safety issues highlighted.
- Unsustainable location that will promote car use.
- Concerns raised with regards to the application process, including the lack of a site notice and the publishing of Parish Council comments against the application on the Council's website.

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

## 7. RESPONSE TO CONSULTATION

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. STEEPLE ASTON PARISH COUNCIL (SAPC): **No objections.** Whilst indicating support for the application, noting potential S106 benefits to village facilities, also comments on securing Thames Water's assurances that the sewerage system can cope.

7.3. MID-CHERWELL NEIGHBOURHOOD PLAN FORUM (MCNPF): **No objections.** The MCNPF notes the changes made to the previous scheme and improvements that have been made. Whilst the MCNPF, on balance, supports the application it also notes that: Policy PH3 (Adaptable Housing Policy) '*has been ignored*', and that the spirit of compliance with Policy PH1 (Open Market Housing Schemes Policy) '*has now been watered-down*' as a result of the proposed housing mix.

### CONSULTEES

7.4. BUILDING CONTROL: No comments received.

7.5. CAMPAIGN TO PROTECT RURAL ENGLAND: No comments received.

7.6. DESIGN AND CONSERVATION: **Objects.**

7.7. ECOLOGY: **Objects.** The Ecologist notes the need for method statements for avoidance of harm being required for reptiles and badgers, mitigation for loss of habitat to birds, bats and reptiles, and further that the proposals do not demonstrate a nett gain in biodiversity as required by both local and national policy guidance.

7.8. ENVIRONMENTAL HEALTH: **No objections subject to conditions.** Conditions required in relation to securing appropriate noise mitigation measures (as set out in

accompanying Noise Impact Assessment); assessment of land contamination and the inclusion of Electrical Vehicle (EV) charging points.

- 7.9. LANDSCAPE SERVICES: **No objections** subject to revised landscaping details and securing a S106 Agreement in respect of: open space maintenance and off-site contributions towards the upgrade of worn out play equipment identified by the SAPC.
- 7.10. LONDON AND OXFORD AIRPORT: No comments received.
- 7.11. MINERALS AND WASTE: No comments received.
- 7.12. NATIONAL AIR TRAFFIC SYSTEMS: **No objections.**
- 7.13. PLANNING POLICY: No comments received.
- 7.14. OCC ARCHAEOLOGY: **No objection.**
- 7.15. OCC EDUCATION: **No objections** subject to S106 to secure contributions towards the expansion of secondary capacity serving the proposed development.
- 7.16. OCC LOCAL HIGHWAY AUTHORITY (LHA): **No objections**, subject to standard conditions and S278 and S106 Agreements. Conditions required in respect of: access, vision splays parking/manoeuvring areas, surfacing and drainage and the need for an appropriate Construction Traffic Management Plan. S106 required to secure Public Transport Service Contributions and requirement for further S278 Agreement to be in place prior to implementation. S278 Agreement required to secure work to create a bell-mouth junction to provide access from the site on to South Side and Off-site highway works, including a length of 1.2m wide footway, coloured virtual footway, priority build-out feature, signing, lining and lighting.
- 7.17. OCC LEAD LOCAL FLOOD AUTHORITY (LLFA): **No objections** subject to conditions in relation to securing an appropriate drainage strategy for the site based on SUDs principles and including future maintenance.
- 7.18. RECREATION AND LEISURE: **No objections**, subject to a S106 to secure: Community Hall Facilities; Outdoor Sport Provision and indoor sport provision.
- 7.19. STRATEGIC HOUSING: **Objects.** Whilst the number of houses proposed on this site is set below the threshold that would trigger the requirement to provide affordable housing, it is considered that there is capacity to provide an increased number of dwellings; with more efficient use of land as required by Policy BSC2 of Cherwell Local Plan 2011-2031 Part 1. There is currently an identified affordable housing need within the village, and this proposal could contribute to meeting this need.
- 7.20. THAMES VALLEY POLICE ADVISOR: **No objections** subject to a condition seeking to secure Secured by Design accreditation. Further, comments on some minor design changes being required to enable the scheme to meet such standards and the lack of attention within the Design and Access Statement to addressing matters of crime and disorder.
- 7.21. WASTE AND RECYCLING: No comments received.
- 7.22. *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.*

7.23. *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)

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land – Brownfield land and Housing Density
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDs)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the Built and Historic Environment
- Villages 1: Village Categorisation
- Villages 2: Distribution Growth Across the Rural Areas
- INF1: Infrastructure

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

- H18: New dwellings in the countryside
- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- ENV1: Environmental pollution
- ENV12: Potentially contaminated land

8.3. Under Section 38 of the Planning and Compulsory Purchase Act 2004, a Neighbourhood Plan that has been approved at referendum also forms part of the statutory development plan for the area. In this case, the application site falls within the Mid-Cherwell Neighbourhood Plan 2018-2031 (MCNP) and the following Neighbourhood Plan Policies of the are considered relevant:

- PD1: Development at Category A Villages
- PD4: Protection of Important Views and Vistas
- PD5: Building and Site Design
- PD6: Control of Light Pollution
- PH1: Open Market Schemes
- PH3: Adaptable Housing
- PH5: Parking, Garaging and Waste Storage Provision

8.4. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Steeple Aston Conservation Area Appraisal 2014
- Cherwell Residential Design Guide SPD (CRDG) (July 2018)
- Developer Contributions SPD (February 2018)
- Annual Monitoring Report (AMR) (December 2018)
- Housing Land Supply in Oxfordshire: Ministerial Statement of 12th September 2018
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)

## **9. APPRAISAL**

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

- Principle of Development;
- Housing Density and Mix;
- Design and Impact on the Character of the Area;
- Highways Safety;
- Residential Amenity;
- Flood-risk and Drainage;
- Ecology and Biodiversity.

### Principle of Development

9.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the District comprises the adopted Cherwell Local Plan 2011-2031 and the saved policies of the Cherwell Local Plan 1996 as well as a number of Adopted Neighbourhood Plans; in respect of this application this includes the Mid-Cherwell Neighbourhood Plan.

### *Policy Context*

- 9.3. The NPPF's key objective is to support the achievement of sustainable development through the planning system, recognising the need to secure gains in the overarching objectives (economic, social and environmental). In respect of new residential development there is a requirement for the provision of new housing of the right type in the right location at the right time, and that development should contribute to protecting and enhancing our natural, built and historic environment, as well as fostering a well-designed and safe built environment (Para. 8). These aims are echoed within the policies of the CLP 2031 which looks to support sustainable development.
- 9.4. 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.
- 9.5. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that conflicts with the Local Plan should be refused unless other material considerations indicate otherwise (Para. 12).
- 9.6. Cherwell District Council can demonstrate a 4.6-year supply of deliverable housing sites (i.e. less than the 5-year supply required in the NPPF). Notwithstanding this, the Written Ministerial Statement of 12th September 2018 provides for a temporary change to housing land supply policies as they apply in Oxfordshire. Until the adoption of the Joint Statutory Spatial Plan, the Oxfordshire Authorities are required to demonstrate a 3-year supply of deliverable housing sites (as well as meeting their requirements in respect of the Housing Delivery Test). As such, policies for determining the application are only to be considered out of date (in accordance with paragraph 11d – footnote 7 of the NPPF) where a 3-year supply of deliverable sites cannot be demonstrated. A 3-year supply can be demonstrated in this case and so the presumption in favour of sustainable development, as advised by the NPPF, will need to be applied in this context.
- 9.7. Policy ESD1 of the CLP 2031 states that measures will be taken to mitigate the impact of development within the District on climate change. This will include distributing growth to the most sustainable locations as defined by Policy Villages 1 and delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars.
- 9.8. Policy Villages 1 of the CLP 2031 provides a framework for housing growth in the rural areas of the district and groups villages into three separate categories (A, B and C). Steeple Aston is recognised as a Category A village where new residential development will be restricted to conversions, infilling and minor development within the built-up area of the settlement.
- 9.9. Policy Villages 2 of the CLP 2015 states that: *"A total of 750 homes will be delivered at Category A villages. This will be in addition to the rural allowance for small site 'windfalls' and planning permissions for 10 or more dwellings as at 31 March 2014"*. This Policy notes that sites will be identified through the preparation of the Local Plan Part 2, through the preparation of the Neighbourhood Plan where applicable, and through the determination of applications for planning permission.
- 9.10. The MCNP established settlement boundaries for the Category A villages within its Plan area. The application site falls outside of the identified settlement boundaries. Policy PD1 of the MCNP relates to new development at Category A villages within its Plan area, and states that any residential development which is outside the



settlement areas of these villages must have particular regard to all the following criteria:

- a) The site should be immediately adjacent to the settlement area
- b) The site should not be the best and most versatile agricultural land and the use of previously developed land is particularly likely to be acceptable.
- c) The development should conserve and, where possible, enhance the landscape.
- d) The development should conserve and, where possible, enhance the special interest, character and appearance of the conservation areas and the significance of other heritage assets (see Appendix K: Heritage and Character Assessment).
- e) The development should not give rise to coalescence with any other nearby settlement. This particularly applies to Steeple Aston and Middle Aston.

9.11. Policy PD1 identifies the total *approximate, indicative* number of additional dwellings permitted during the Plan period either within the settlement areas of these villages, or adjacent to them, as being 20no for Steeple Aston.

9.12. Saved Policy H18 of the CLP 1996 sets out that a new dwelling in the open countryside will only be granted planning permission where it is considered to be essential for agriculture or another existing undertaking or where it meets the criteria for the provision of affordable housing and in either case where it does not conflict with any other policy in the development plan. The proposals do not find support under Policy H18.

#### 9.13. *Assessment*

9.14. The proposals are for open-market housing beyond the built-up limits of the village and therefore would not find support under Policy Villages 1 of the CLP 2031 or saved Policy H18 of the CLP 1996.

9.15. The MCNP was 'made' in 2019 and forms part of the Development Plan. In assessing new residential development on the edge of Category A villages regard must be had to the provisions of Policy PD1 as set out above. Policy PD1 is considered to be in conformity with Policy Villages 2 of the CLP 2031 and largely reflects its provisions and aims. However, given that Policy PD1 is a more recently adopted policy, specific (in this instance) to Steeple Aston, officers consider that greater weight should be given to this policy in consideration of the principle of development in this instance. In assessing the proposals against these criteria in turn, officers consider the following points to be relevant:

- a) The site sits immediately adjacent the western boundary of the village and in broad terms development of the site would – albeit set back from the highway – continue the general linear form of the existing settlement pattern as seen on the southern side of South Side.
- b) Data provided to the Council by Natural England shows the land to be Class 5 (very poor) agricultural land.
- c) The introduction of significant new residential development on the site would obviously change the character and appearance of the site at this location. The site is currently largely devoid of any significant built form, albeit that

officers are aware from historic aerial photography that there have previously been agricultural structures on the site. The proposed development would be contained within the existing site boundaries and any impacts on the wider landscape could largely be mitigated through an appropriate landscaping scheme, enhancing the site boundaries, to ensure the surrounding landscape character would largely be conserved.

- d) The proposals would not give rise to coalescence with any other nearby settlement.

### *Conclusion*

- 9.16. In light of the above the principle of residential development on the site could be acceptable and accords with the provisions of Policy PD1 of the MCNP in so far as it relates to the principle of residential development at this site. However, overall acceptability of the proposals is dependent on other material considerations, such as density, housing mix, design and impact on heritage assets, ecology and highway safety.

### Housing Density and Mix

#### *Policy Context*

- 9.17. The NPPF advises that in order to create sustainable, inclusive and mixed communities, Local Planning Authorities should plan for a mix of housing, reflect local demand and set policies for meeting affordable housing need. Policy BSC4 of the Local Plan requires new residential development to provide a mix of homes in the interests of meeting housing need and creating socially mixed and inclusive communities.
- 9.18. The NPPF (Para. 117) states that: *'Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions'*.
- 9.19. Further at Para. 122 that: *Planning policies and decisions should support development that makes efficient use of land, taking into account:*
- a) *the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;*
  - b) *local market conditions and viability;*
  - c) *the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;*
  - d) *the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and*
  - e) *the importance of securing well-designed, attractive and healthy places.*
- 9.20. Policy BSC2 of the Cherwell Local Plan 2011-2031 Part 1 (CLP 2031) reflects the aims of national guidance and requires that new housing should be provided on net developable areas at a density of at least 30 dwellings per hectare (DPH) unless there are justifiable planning reasons for lower density development.

- 9.21. Policy BSC4 of the CLP 2031 states that: *'New residential development will be expected to provide a mix of homes to meet current and expected future requirements in the interests of meeting housing need and creating socially mixed and inclusive communities'*. Further that: *'The mix of housing will be negotiated having regard to the Council's most up-to-date evidence on housing need and available evidence from developers on local market conditions'*
- 9.22. Policy PH1 of the MCNP is considered to be in line with Policy BSC 4 of the CLP 2031 and requires that: in developments of 10 dwellings or more, the indicative mix should be: 30% 1 or two bedrooms, 46% 3 bedrooms and no more than 24% with 4 bedrooms or more.

#### *Assessment*

- 9.23. The proposals are for 10no dwellings on a site of 0.93Ha resulting in a proposed density of 10.8 DPH; this is significantly below the density required under Policy BSC2. The applicants contend that the low density should be considered acceptable in light of the edge of village setting, and also provide comparisons with other existing smaller developments immediately to the north of the site and along Water Lane north-east of the site. Whilst officers note these comments, it is also noted that there are more recent significant developments on the edge of the village, which are considered more comparable to the current site, including Coneygar and Shepherds Hill, and these have achieved greater densities (23 DPH & 26 DPH respectively), whilst also contributing much needed affordable housing.
- 9.24. The NPPF (Para. 123) states that: *'Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site'*.
- 9.25. At 0.93Ha the site would normally be expected to provide in excess of the affordable housing threshold in Policy BSC3 (11 or more dwellings). This policy states includes the wording *'...all development that include 11 or more dwellings (gross), or which would be provided on sites suitable for 11 or more dwellings, will be expected to provide at least 35% of new housing as affordable homes on site'*.
- 9.26. The MCNP notes (e.g. at para 1.11.2) a particular requirement for the provision of Affordable Housing. The Vision Statement of the MCNP sets out a need for small-scale affordable housing. MCNP housing policy objective H2 seeks to "ensure that affordable housing is provided within any local developments". This is reiterated in para 2.3.3 with regard to how the MCNP will deliver on its objectives, and para 3.3.2 states that, along with objective H1, H2 "will...help to achieve the provision of affordable housing and a mix of housing types and sizes..."
- 9.27. The Council's Strategic Housing Team objects to the application considering that the site could accommodate a greater number of dwellings and trigger the threshold for affordable housing under Policy BSC3 of the CLP 2031. Further advising that: *'Appraisal of the CDC Housing Register and the Oxfordshire Strategic Housing Market Assessment informs our affordable housing requirements. The housing proposed on this site is a mix of semi-detached and detached 2, 3 and 4-bedroom houses. Our register currently shows there are 4 households with a local connection who require 1-bed, 2-bed and 4-bed houses; some affordable housing provision would help with this need'*. The case officer supports the views of the Housing Team, in that the site could achieve a greater density, and it is considered that this could be achieved without the site appearing overly cramped or to the significant detriment of the character of the surrounding area; through a more appropriate housing mix and the use smaller dwelling types.

- 9.28. The Oxfordshire Strategic Housing Market Assessment (SHMA 2014) provides the evidence base and conclusions on a strategic mix of housing for the relevant policies of the current Development Plan. This identifies a mix for market housing of 5% 1-Bed, 25% 2-Bed, 45% 3-Bed and 25% 4-Bed for Oxfordshire, albeit identifying that there is a greater need for 3-bed properties within Cherwell. Policy PH1 of the MCNP is considered to be in general consistency with Policy BSC 4 of the CLP 2031 and requires that: *'in developments of 10 dwellings or more the indicative mix should be: 30% 1 or two bedrooms, 46% 3 bedrooms and no more than 24% with 4 bedrooms or more'*. At a mix of 20% 2-bed, 50% 3-bed and 30% 4/5-Bed the current scheme is not considered to comply with the provisions of Policy PH1 MCNP or Policy BSC4 of the CLP 2031.
- 9.29. Officers consider that this lack of compliance with appropriate housing further adds weight to the case for the LPA requiring smaller, more affordable dwellings as part of any development of this scale. The application site has the capacity to take additional development and, given development of the site is considered acceptable in principle, could meet identified needs as expressed in the Strategic Housing Team's comments previously supplied and the objectives of the Mid Cherwell Neighbourhood Plan. Put simply, the current proposal would conflict with the Vision Statement, objectives and relevant policies of the MCNP.
- 9.30. During the preparation of this report a late offer was received from the applicants to deliver the two proposed 2-bedroom units as shared ownership tenure homes; in some respects, acknowledging the Council's concerns with regards to the lack of affordable housing provision. Given the timing of this offer officers have not had an opportunity to undertake appropriate consultation on the proposed revised scheme. However, notwithstanding, it should be noted that two affordable units out of a development of 10 would still be below the requirements of Policy BSC3 of the CLP 2031, which would require 35% affordable provision of an appropriate mix (4no units in a scheme of 10). Notwithstanding officer's concerns in relation to the low density and lack of affordable housing provision, should the Council resolve to grant permission the two proposed 2-bedroom units as shared ownership tenure homes would need to be secured by way of an appropriate S106 agreement.

### *Conclusion*

- 9.31. The proposals are not considered to provide appropriate mix of housing that would either meet the identified needs of the village or district as a whole. Further by virtue of the proposed low density the proposals would not be an effective and efficient use of land. The current proposal is therefore contrary to Policies PH1 of the MCNP, Policies BSC2 and BSC4 of the CLP 2031 and Government guidance within the NPPF.

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

#### *Legislative and policy context*

- 9.32. 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.
- 9.33. These aims are also echoed within Policy ESD15 of the CLP 2031 which looks to promote and support development of a high standard which contributes positively to an area's character and identity by creating or reinforcing local distinctiveness, stating that: *"New development proposals should respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to integrate with existing streets and*

*public spaces, and buildings configured to create clearly designed active public frontages*". Policy PD5 of the MCNP further reflects these provisions and aims

- 9.34. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved Policy C30 of CLP 1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.
- 9.35. The Council's Residential Design Guide SPD seeks to ensure that new development responds to the traditional settlement pattern, character and context of a village. This includes the use of continuous building forms along principle routes and adjacent to areas of the public open space, the use of traditional building materials and detailing and form that respond to the local vernacular.
- 9.36. Policy ESD13 of the CLP 2031 states that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not normally be permitted if they would cause undue visual intrusion into the open countryside, cause undue harm to important natural landscape features and topography, be inconsistent with local character, or impact on areas judged to have a high level of tranquillity.
- 9.37. The site affects the setting of a Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*

Likewise, Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.

- 9.38. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 193 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2031 Part 1 echoes this guidance.

#### *Assessment*

- 9.39. The site sits at the entrance to the village, with the Steeple Aston Conservation Area, including the approach road into the village, adjacent the site. Views of the site from the public domain would be experienced from both the adjacent highway (South Side) and the PRow which crosses land to the south of the site. Proposals would see a linear form of development on the rural edge of the village, set back off the highway, behind boundary wall treatment, private access road and landscaping. The rear boundary of the site would be reinforced with additional landscaping.
- 9.40. The Steeple Aston Conservation Area Appraisal (SACAA) pays particular attention to the immediate context and location of the site. The proposed development lies immediately adjacent to the 'Peripheral areas' which are described in the appraisal: *'As the name suggests, these areas are set at the extreme edges of the historic core*

*and have a less formal feel to them when compared with the traditional streets. Despite being separated, these entrances to the village are similar in their low-key rural approaches to the historic areas'. The properties along South Side are not overly large, but are often of high quality. Simple and elegant proportions are the most striking factor along this road, with a mixture of detached houses and small runs of terraced cottages.*

- 9.41. The specific area around the proposed development is described separately within the SACAA, *'Leading out of the village west again, the tree cover creates a tunnel effect when viewed from the junction with Water Lane. This tunnel of trees is replicated on both Fir Lane and South Side, together with green verges and a lack of dwellings fronting the highway'*.
- 9.42. The CRDG reflects the provisions and aims of Policy ESD 15 advising that new development should promote a harmonious composition of buildings that contributes to the overall legibility and character of the place; respecting traditional settlement form and character and utilising building types which reflect local traditions and can be successfully grouped together. Further that new development should avoid estates with a homogenous, *'could be anywhere'* character, use of inflexible, standard house types which cannot be grouped effectively and the use of detached houses on small plots when a terraced form is more appropriate.
- 9.43. In terms of proposed materials these are likely to be acceptable, being relatively consistent with those in use within the village officers remain concern with regards to the layout and some of the proposed building types. Specific materials and construction could be secured by way of appropriate conditions.
- 9.44. Whilst the Council's Design and Conservation Officer does not discount the principle of development on the site, she raises a number of concerns with regards to the proposals as currently submitted; considering the overall scheme to be very suburban in form, with a variety of generic house types that are not based on local precedent. This echoes the case officer's opinion with regards to the proposed scheme; in particular, it is noted that Plots 4 and 7 are gable fronted properties, which are not considered typical of the Cherwell vernacular. Plot 10 is considered to further jar with the overall scheme, sitting as more of an appendage in relation to the rest scheme as opposed to a harmonious continuation of the built form.
- 9.45. The scheme proposes large executive style homes with large double garages immediately adjacent the existing village boundary, at a low density. The density increases within the development towards the western edge of the site; with it being noted that Plots 1-3 cover a larger proportion of the site than Plots 6-10. This is contrary to that which officers would expect to see on the edge of rural villages, with development becoming more loose-knit on the periphery of the settlement. This is considered contrary to the existing pattern of residential development at this edge of village location.
- 9.46. The proposals include significant new landscaping, particularly along the boundaries of the site, which is largely welcomed by officers. The Landscape Officer recommends some amendments to the proposed landscaping; however, these have not been pursued by officers given the overall recommendation. It is considered the proposed landscaping would assist in mitigating the visual impacts of the proposed development particularly to views from the south and limiting any visual intrusion into the open countryside; and appropriate details could be secured by way of condition were the Council minded to approve the application.
- 9.47. The Conservation Officer raises further concerns with regards to the proposed traffic calming measures, including the proposed build-out and associated signage which

would have a significant impact on the character and appearance of the Conservation Area at this location. Whilst there would be clear benefits in terms of highway safety this has to be weighed against the detrimental visual impacts as a whole. In this respect it is considered that the proposals as a whole would result in harm to the character and appearance of the Conservation Area, with the level of harm being considered 'less than substantial'.

### *Conclusion*

- 9.48. The proposals are not considered to reflect or reinforce local distinctiveness or the existing pattern of residential development within the area; contrary to the provisions and aims of the relevant Development Plan policies. Thereby detrimentally impacting on the character and appearance of the area and failing to reflect or preserve the character or appearance of the Conservation Area. This harm would be 'less than substantial'.
- 9.49. The NPPF (Para. 196) advises that where a development proposal would lead to 'less than substantial' harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. It is considered the limited public benefit gained in providing additional housing would not outweigh the harm that would be caused in this instance, and further the conflict with development plan policy identified above. The proposals therefore conflict with the relevant policies of the Development Plan and are therefore considered unacceptable in this regard.

### Highway Safety

#### *Policy Context*

- 9.50. The NPPF (Para. 108) states that the planning system should actively manage patterns of growth in support of the achievement of promoting sustainable transport. However, notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.
- 9.51. The NPPF (Para. 108) advises that in assessing specific applications for development, it should be ensured that:
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - safe and suitable access to the site can be achieved for all users;
  - and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 9.52. 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*

- 9.53. The application is supported by a Transport Statement and an associated Road Safety Audit. The details of the application have been assessed by the Local

Highways Authority (LHA) who raise no objections, subject to conditions securing further details in respect of access, vision splays parking/manoeuvring areas, surfacing and drainage and the need for an appropriate Construction Traffic Management Plan. The LHA further require a S106 to secure Public Transport Service Contributions and requirement for further S278 Agreement to be in place prior to implementation of any approved development. The S278 Agreement is required to secure work to create a bell-mouth junction to provide access from the site on to South Side and off-site highway works, including a length of 1.2m wide footway, coloured virtual footway, priority build-out feature, signing, lining and lighting.

- 9.54. Concerns have been raised in Third Party correspondence with regards to a number of highway safety related issues including comments in respect of the lack of visibility and the safety of pedestrians accessing the wider village and its associated facilities. The LHA has reviewed these concerns and maintain their position as to the overall acceptability of the scheme in terms of highway safety. Whilst officers note the Third Party concerns, given the technical assessment that has been undertaken by the LHA and it has been concluded that the proposals are considered to be acceptable in terms of highway safety officers see no reason to disagree with the LHA's assessment.
- 9.55. The proposals whilst sited on the edge of the village would be served by access with appropriate visibility that complies with relevant standards for a site within the existing 30mph speed limit. The development would also be served by appropriate parking provision within the site for the levels of accommodation proposed.
- 9.56. The proposals include traffic calming measures and pedestrian connectivity back into the village as detailed with the submitted Transport Statement, which the LHA considers appropriate and which in its opinion would represent an improvement to the safety of pedestrian movements above the current situation in this location. The LHA advises: *"OCC are satisfied that the proposals will offer a significant improvement for pedestrians moving to/from the west side of the village to the centre. The virtual footway concept has been used successfully in other locations within Oxfordshire (and elsewhere) and is considered appropriate in this situation, in conjunction with a build-out feature that will reduce vehicle speeds and will effectively reduce traffic flow to a single lane along the length of the virtual footway."*

#### *Conclusion*

- 9.57. In light of the LHA's advice, officers conclude that the proposal would not have a significant adverse impact upon the safe and efficient operation of the highway network subject to conditions, S106 contributions and an obligation to enter into a S278 agreement. It is considered that notwithstanding the objections raised above that the requirements of the LHA could be secured by appropriate conditions and the necessary legal agreements, were the Council be minded to approve the application; to ensure that the proposals would be acceptable in terms of highway safety.

#### Flooding Risk and Drainage

##### *Policy Context*

- 9.58. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.



- 9.59. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

#### *Assessment*

- 9.60. A site-specific Flood Risk Assessment & Development Drainage Strategy (FRA) prepared MJA Consulting has been submitted in support of the application. The Environment Agency's flood maps indicate that site is not within a higher risk flood zone and are within Flood Zone 1 where residential development is acceptable in principle subject to no increased flood risk elsewhere as a result of proposal.
- 9.61. The site is in a location that is not identified as being at higher risk of flooding. The FRA includes a drainage strategy for the site which has been assessed and largely considered acceptable by the County Council as LLFA. The LLFA recommends a number of conditions to ensure that the proposals represent a sustainable form of development that would be compliant with the principles of SUDs. It is again considered, that notwithstanding the objections raised above, that the requirements of the LLLFA could be secured by appropriate conditions, were the Council be minded to approve the application; to ensure that the proposals would be acceptable in terms of flood-risk and drainage.
- 9.62. Comments have been made by SAPC in respect of the capacity within the existing sewerage system. The applicant indicates that sewerage would be disposed of by way of mains sewer. As noted within the submitted FRA the proposals would require the permission of Thames Water to connect to the existing sewerage system, which is presumed would not be granted if there was a capacity issue. Should a situation arise whereby connection to the existing sewer system be refused then the developer would then need to look at an alternative on-site solution.

#### *Conclusion*

- 9.63. Officers consider that, in light of there being no technical objections being raised, and subject to appropriate conditions securing an appropriate surface water drainage scheme for the site, based on sustainable drainage principles and an acceptable sewage drainage strategy, the proposals are considered acceptable in terms of flood-risk and drainage.

#### Residential Amenity

#### *Policy Context*

- 9.64. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2031 which states that: *'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'*.

#### *Assessment*

- 9.65. The proposals would provide acceptable internal layouts and external amenity space that would provide for a good standard of living, and are considered acceptable in this regard.
- 9.66. Given the rural context of the site and relationship of the proposed development with surrounding properties it is considered that the proposals would not likely result in any significant detrimental impacts on the residential amenity (loss of light, loss of outlook, over-domination or loss of privacy) of surrounding properties and could be considered acceptable in this respect.

9.67. Concerns had previously been raised by officers at the pre-application stage with regards to potential detrimental impacts arising from the operation of the adjacent commercial garage to the west of the site. In this respect the current application is supported by a noise assessment. The report highlights potential noise issues arising from the use of an external compressor at the garage and recommends mitigation measures including the introduction of an acoustic screen. The detail of report and proposed mitigation is considered acceptable by the Council's Environmental Protection Team.

#### *Conclusion*

9.68. Given the above, officers are satisfied that the development can be made acceptable in residential amenity terms, both for existing residents neighbouring the site and future occupiers.

#### Ecology Impact

#### *Legislative context*

9.69. 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.

9.70. 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.

9.71. 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.

9.72. 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.

9.73. 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*

9.74. 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.

9.75. 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.

9.76. 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.

9.77. Policy ESD10 of the CLP 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.

9.78. 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.

9.79. 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*

9.80. 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')

9.81. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site is in a rural location, with unmanaged grassland and mature natural boundary hedgerow and trees, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers and reptiles.

9.82. 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 authority has to consider itself whether the development meets the 3 derogation tests listed above.

9.83. 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.

9.84. The application is supported by a detailed Ecological Assessment and Ecological Mitigation and Management Plan prepared by Southern Ecological Solutions. The Ecological Assessment identified that whilst bat emergence and reptile survey did not provide any evidence of bats or reptiles being present on the site, given the nature of the site and its natural boundaries that there was some ecological potential and a number of proposed mitigation measures are put forward.

9.85. The Council's Ecologist has assessed the submitted reports and whilst raised no significant concerns with regards to protected species actually on site, noted that method statements for avoidance of harm are required for reptiles and badgers and mitigation for loss of habitat to birds, bats and reptiles is also needed.

9.86. Without knowing whether the impacts and loss of habitat can be satisfactorily be mitigated the Council cannot fulfil its statutory duty with regards to protected species and their habitats.

9.87. The Ecologist also considers that the submitted information is also insufficient in terms of its assessment and proposed enhancements to demonstrate that the proposed development would provide a net gain in Biodiversity opportunities at the site rather than just mitigating loss that would be caused by the proposed development.

*Conclusion*

9.88. It is considered that there is insufficient information to enable the LPA to appropriately and fully assess the impact on protected species and their habitats and to conclude that protected species would not be unacceptably harmed or any such harm mitigated against by the proposed development, and further that proposals would provide for a nett gain in biodiversity at the site; contrary to the provisions and aims of Policy ESD10 of the CLP 2031 and Government guidance within the NPPF in respect of Conserving and enhancing the natural environment.

#### Other Matters

9.89. Notwithstanding the Officer's recommendation of refusal, should Members resolve to approve the application, a S106 Legal agreement would be required to be entered into to secure mitigation resulting from the impact of the development both on and off site. This would ensure that the requirements of Policy INF1 of the Local Plan can be met, which seeks to ensure that the impacts of development upon infrastructure including transport, education, social and community facilities can be mitigated. This includes the provision of affordable housing offered at the late stage by the applicant. The Authority is also required to ensure that any contributions sought meet the following legislative tests, set out at Regulation 122 of the Community Infrastructure Regulations 2011 (as amended):

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

9.90. The following are sought through this application, but Officers have not entered into negotiations with the applicant in respect of these matters due to the recommendation:

- Affordable housing – The provision of two proposed 2-bedroom units as shared ownership tenure homes
- Open space provisions to include the laying out and regulation of such areas and arrangements for the long-term management and maintenance including the provision of commuted sums towards surface water drainage features, public open space and hedgerows.
- Contribution towards the enhancement of public transport services; including improvements to the bus service that connects Steeple Aston to Banbury and Oxford.
- An obligation to enter into a S278 Agreement prior to the commencement of the development.
- Contribution towards the expansion of secondary capacity serving the proposed development.
- Contribution towards the refurbishment/improvements at community facilities in Steeple Aston.
- Contribution towards offsite outdoor sports towards one-off capital expenditure for the existing Football Ground within Steeple Aston as additional usage is envisaged. Projects include top dressing of the field, new fencing and gates to the field area; provision of outdoor gym equipment; provision of an additional cricket net. And further the resurfacing with tarmac of the adjacent basketball court.

- Contribution towards off-site indoor sports towards the improvements at Sports and Recreation Centre in Steeple Aston (which will serve the new residents)
- Contributions towards waste and recycling bins

9.91. Given that there is no legal agreement in place to secure the above referenced matters (notwithstanding the applicant may be prepared to enter into such an agreement), it is necessary for a refusal reason to be imposed as there is no certainty that the infrastructure necessary to make the development acceptable in planning terms will be secured.

#### Contamination

The Environmental Protection Team notes the potential for land contamination arising from the adjacent commercial garage use. Further investigation is recommended to further assess potential risks. Given this conclusion, planning conditions could be recommended to require further contaminated land assessment and to secure appropriate mitigation if this application were to be recommended for approval and as recommended by the Council's Environmental Protection Team.

#### Human Rights and Equalities

9.92. 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.

9.93. 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*

9.94. 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 will be invited to the public meeting of the Planning Committee and have 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*

9.95. 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.

#### *Duty under The Equalities Act 2010*

- 9.96. 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.
- 9.97. 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 NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 10.2. In reaching an informed decision on planning applications there is a need for the Local Planning Authority 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. Given the above assessment it is considered that the proposals represent an inappropriate form of development, which fails to reflect or reinforce local distinctiveness, and which would detrimentally impact on the character and appearance of the area and adjacent Conservation Area and its significance as a Designated Heritage Asset. Further that the proposed scheme is at a density and housing mix that would be neither an effective and efficient use of land neither or meet the housing needs of the district.
- 10.4. Whilst the proposals would potentially provide additional housing that would contribute to the District’s housing land supply it is considered that this benefit not outweigh the environmental harm identified above and as such the proposals would therefore not represent a sustainable form of development.
- 10.5. Given the above assessment in the light of current guiding national and local policy context, it is considered that the proposal conflicts with the relevant Policies of the Development Plan outlined above and therefore permission should be refused.

## **11. RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW**

1. By virtue of its siting, layout and design the proposals represent an inappropriate form of residential development, which fails to reflect or reinforce local distinctiveness, and which would detrimentally impact on the character and appearance of the area and adjacent Conservation Area. Further that the proposed scheme is at a low density and of a housing mix that would neither be an effective and efficient use of land or meet the housing needs of the District. Contrary to the provisions and aims of Policies PD1, PD5 and PH1 Mid-Cherwell Neighbourhood Plan 2018-2031, Policies Villages 1, BSC2,

BSC3, BSC4 and ESD15 of the CLP 2031 and Government guidance contained within the National Planning Policy Framework.

2. By virtue of a lack of appropriate ecological information within the application the applicants have failed to demonstrate that the proposals would not detrimentally impact on protected species and their habitat, to conclude that protected species would not be unacceptably harmed by the proposed development. Further, that it has not been demonstrated that proposals would provide a nett gain in biodiversity at the site; contrary to the provisions and aims of Policy ESD10 of the CLP 2031 and Government guidance contained within the National Planning Policy Framework in respect of Conserving and enhancing the natural environment.
3. In the absence of the completion of a satisfactory Section 106 Agreement, the Local Planning Authority is not convinced that the necessary infrastructure directly required as a result of this development, in the interests of supporting the sustainability of the village and the development, and in the interests of safeguarding public infrastructure and securing on site future maintenance arrangements, will be provided. This would be contrary to Policies INF1, PSD1, BSC3, BSC10, BSC11 and BSC12 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

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