

Case Officer: James Kirkham

Applicant: Mr R Levenston

Proposal: Erection of three B1 (c) light industrial units

Ward: Banbury Grimsbury and Hightown

Councillors: Councillor A Beere, Councillor S Hussain and Councillor P Moon

Reason for Referral: Major development

Expiry Date: 31 July 2020

Committee Date: 16 July 2020

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: GRANT PERMISSION SUBJECT TO NO OBJECTION BEING RECEIVED FROM THE COUNCIL'S ECOLOGIST BY 31st AUGUST 2020 AND SUBJECT TO CONDITIONS AND COMPLETION OF A S106 LEGAL AGREEMENT

Proposal

The proposed development for the erection of a block of 3no attached light industrial units on the site.

Consultations

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

- None

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

- Banbury Town Council, OCC Highway, OCC Drainage, CDC Environmental Protection, CDC Arborist Canals and River Trust, Environment Agency

The following consultees are **outstanding** on the revised information:

- CDC Ecology

One letter of objection has been received.

Planning Policy and Constraints

The application site is within the site allocation known as Banbury 1 (Canalside). The northern and eastern parts of the site also lie within Flood Zone 2 and 3 associated with the River Cherwell which exists to the north of the site. The Oxford Canal Conservation Area runs to the south of the site which includes a tow path which is a public right of way.

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 and heritage
- Highways
- Flood risk and Drainage
- Ecology Impact
- Residential amenity
- Other matters

The report considers the key planning issues in detail, and Officers conclude that subject to no objection being raised by the Environment Agency or the Councils Ecologist the proposal is acceptable subject to conditions and a legal agreement.

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 vacant area of land to the east of a number of existing industrial units on The Tramway in Banbury. The Oxford Canal is located to the south and the River Cherwell to the north. The site is relatively level with the exception of the northern boundary which banks down to the River Cherwell where a number of trees also exist.

2. CONSTRAINTS

- 2.1. The application site is within the site allocation in the Cherwell Local Plan Part 1 (2015) known as Banbury 1 (Canalside). The northern and eastern parts of the site also lie within Flood Zone 2 and 3 associated with the River Cherwell which exists to the north of the site. The Oxford Canal Conservation Area runs to the south of the site which includes a tow path that is a public right of way.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The current application seeks permission to erect three light industrial units (use class B1(C)) on the application site. The units would be 2 storey in height with a pitch roof and mezzanine floor and be covered with grey/silver cladding. They would have a total floorspace of 1558sqm. The units would be arranged in a single rectangular box and would be orientated on an east west axis and would be situated

towards the northern part of the site. The proposal includes 29 parking spaces, which would be located to the south of the units. The site would be accessed via an area of land to the south of the existing industrial units to the west of the site.

4. RELEVANT PLANNING HISTORY

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

Application: 08/02216/OUT Application 25 February 2010
Permitted

OUTLINE - Erection of new industrial units Class B1 use

Application: 12/01350/REM Application 11 March 2013
Permitted

Reserved matters to outline application 08/02216/OUT - erection of new industrial units Class B1 use

Application: 14/00581/OUT Application 29 June 2015
Permitted

OUTLINE - Erection of three new B1 Industrial Units (Renewal of 08/02216/OUT)

Application: 15/00387/DISC Application 23 November 2015
Permitted

Discharge of Conditions 5, 10, 11, 14 and 15 of 14/00581/OUT

Application: 15/00018/OBL Application 29 June 2015
Permitted

Variation of planning obligation to approved application 08/02216/OUT

Application: 15/01622/REM Application 23 November 2015
Permitted

Reserved matters to 14/00581/OUT - Landscaping including Condition No 5

Application: 18/01009/CLUE Application 9 August 2018
Permitted

Development approved under references 14/00581/OUT, 15/00387/DISC & 15/01622/REM was physically and formally commenced on 25th February 2016.

Application: 19/02074/OUT Pending
consideration

Variation of Condition 4 (plans), 10 (surface water drainage scheme) and 11 (materials and finishes) of 14/00581/OUT - Amendments proposed are inclusion of mezzanine floors; increased eaves height with amended pitch; changed cladding and updated drainage strategy

Officer comment: This application is still outstanding due to discussions over the necessary legal agreement, which in part relate to some of the same outstanding issues that affect this full planning application.

5. PRE-APPLICATION DISCUSSIONS

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

6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **4 March 2020**, although comments received after this date and before finalising this report have also been taken into account.

6.2. 1 letter of objection has been received. The comments raised by third parties are summarised as follows:

- Residential amenity - Impact of new lighting in combination with existing lighting from railway and football ground.
- Impact on wildlife and vegetation between the site, canal and residential properties.
- Proposal could destabilise the bank of the canal
- Concerns over flood risk and drainage.

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

CONSULTEES

7.3. OCC HIGHWAYS: **No objections** subject to conditions on parking, access and cycle parking and a contribution of £25,000 toward the provision of new bus stops on Tramway Road. The proposal significantly greater floorspace (628m² to 1558m²) than the earlier approval. Given the level of parking it is considered crucial that suitable cycle storage and public transport measures are taken to encourage sustainable forms of travel. At least 8 covered cycle hoops capable of storing 16 cycles should be provided. The site location in central Banbury will be feasible for many staff to reach by cycle, and this sustainable mode of transport is to

be encouraged, particularly as the local road network suffers from regular congestion.

- 7.4. In regard to public transport, OCC is engaged in a scheme to improve access to Banbury Rail Station by opening the existing restriction point at the top of Tramway Road. This will open a “bus and taxi only” two-way link past the station to Bridge Street, thus dramatically increasing opportunities for sustainable journeys to the area by public transport by re-routing the existing B3 service along Tramway Road itself. Since the original application in 2014 the Cherwell Local Plan has been adopted and there is an emerging SPD for Canalside - the Tramway link is in both.
- 7.5. The scheme would enhance the opportunities to access the development site by public transport. It is to be funded by Growth Deal and developer contributions. Hence, a contribution of £25,000 is required towards the bus stops that will be located on Tramway Road, very close to the site access road.
- 7.6. OCC DRAINAGE: **No objection** subject to condition securing details drainage scheme.
- 7.7. ENVIRONMENT AGENCY: **No objection** subject to conditions requiring compliance with the submitted Flood Risk Assessment.
- 7.8. CANAL AND RIVER TRUST: **Comment.** Further details are required of the existing and proposed boundary treatment and landscaping adjacent to the canal. It is important that landscaping screens the site. Details of any external lighting should also be proposed.
- 7.9. CDC ARBORIST: **No objection.** The submitted assessments and tree removal is acceptable. A Method Statement will be required alongside details of the replacement tree planting to mitigate for the removals.
- 7.10. Request consideration given to securing contributions towards improvements to the canal towpath and infrastructure given the potential increased usage.
- 7.11. CDC ENVIRONMENTAL PROTECTION: **No objections** subject to conditions for CEMP, details of any extraction equipment, land investigation, electrical vehicle charging points and full details of any external lighting.

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

- SLE1: Employment Development
- SLE4: Improved Transport and Connections
- ESD1-5: Climate Change and Sustainable Construction
- ESD6: Flood Risk
- ESD7: Sustainable Drainage Systems
- ESD10: Protection and Enhancement and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the Built and Historic Environment
- Banbury 1: Canalside

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28: New development design
- ENV1: Pollution Control

8.3. Other Material Planning Considerations

- Banbury Vision and Masterplan (2016)
- Developer Contributions SPD (2018)
- Draft Canalside SPD (2009)
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- 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)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

9. APPRAISAL

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

- Principle of development
- Design, and impact on the character of the area and heritage
- Highways

- Flood risk and Drainage
- Ecology Impact
- Residential amenity
- Other matters

Principle of Development

Policy Context

- 9.2. Legislation in the form of Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require planning applications to be determined against the provisions of the development plan for the area unless material considerations indicate otherwise.
- 9.3. The adopted Cherwell Local Plan 2011-2031 Part 1 (CLP 2015) is the principal development plan document for the District that sets out a strategy and overarching policies to provide for sustainable growth within the District to meet identified need through to 2031. It primarily focuses new growth in the District to Banbury and Bicester whilst limiting it elsewhere in order to provide for the most sustainable form of growth over the plan period. Amongst other things it identifies a number of strategic sites for housing and employment development in and around Banbury so that they are provided in carefully considered proportions in order to deliver a sufficient number and type of jobs to reduce the need for out-commuting from Banbury arising from the new housing which would be unsustainable.
- 9.4. Policy SLE1 of the CLP 2015 states that employment development will be focused on existing employment sites and intensification will be permitted subject to compliance with other policies in the plan and other material considerations.
- 9.5. The site is also located in the area allocated under Policy Banbury 1: Canalside. This is a large strategic allocation (26 hectares), which stretches between the town centre and the railway station and down to Swan Close Road in the south and allocates the wider site for approximately 700 homes and a mix of retail, office and leisure uses. The Banbury Vision and Masterplan Supplementary Planning Document, which was adopted in 2016 builds on this vision. A draft SPD for the wider Canalside site was consulted upon in 2009; however, given its age and the fact it pre-dates the CLP 2015 it is not considered to carry significant weight in decision making at the current time. The Local Development Scheme does outline that work will recommence on the preparation of an SPD for Canalside but to date no draft has been issued for consultation.

Assessment

- 9.6. The current application seeks permission for new industrial uses on the site. As outlined above there are long term aspiration for the redevelopment of the wider Banbury 1 allocation for a high quality mixed use development. The proposed development would not be in line with these longer term objectives for the site. However, as outlined above considerable further work still needs to be undertaken on the vision for the wider allocation and the location of the current site is peripheral to the allocation.

- 9.7. More importantly in this case there is planning history on the site which is highly material to the consideration of the application. A number of permissions have been granted on the application site for new commercial uses and a permission for 3 smaller commercial units from 2014 (14/00481/OUT and 15/01622/REM) has been partially implemented (as confirmed by a Certificate of Lawful Development under 18/01009/CLUE). This means that there is already a permission existing on the site for commercial development which is capable of being fully implemented. It is therefore considered that any identified conflict with Policy Banbury 1 of the CLP 2015 is outweighed by the site's planning history.
- 9.8. In the earlier applications on the site a strip of land to the northern boundary of the site was safeguarded for the provision of a potential new footpath cycle route alongside the River Cherwell. Essentially the legal agreement requires this land to be transferred to the Council if appropriate notice is served. Both Policy Banbury 1 and the Banbury Vision and Masterplan still seek to secure a new riverside park including footpaths and cycle routes through the Banbury 1 site as part of the wider Banbury 1 allocation. The current application therefore seeks to safeguard the same route to the north of the site as was previously secured so a new footway/cycleway could potentially be provided along the River Cherwell in the future. This needs to be secured by a S106 legal agreement.
- 9.9. Furthermore, it is also noted that the proposed development would provide a source of new employment in a sustainable location within proximity of the town centre and residential areas. This would be in accordance with Policy SLE1 of the Cherwell Local Plan and advice in the NPPF which seeks to reduce the need to travel. Overall, therefore, the principle of the development is considered to be acceptable.

Design and impact on character and appearance and heritage Impact

Policy context

- 9.10. Policy ESD13 states proposals will not be permitted if they would cause undue visual intrusion into the open countryside, be inconsistent with local landscape character or harm the setting of settlements. Policy ESD15 states that new development will be expected to complement and enhance the character of its context through sensitive design and siting and be designed to deliver high quality, safe, attractive and durable places to live and work. The NPPF also outlines that high-quality development is fundamental to achieving sustainable development.
- 9.11. The site is outside of the Oxford Canal Conservation Area but development of the site would affect the setting of the Conservation Area. Conservation Areas 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

- 9.12. The proposed development would be located in the context of the existing commercial buildings to the west of the site. The proposed building would have a

similar appearance, mass and scale to these and would form part of the Banbury 1 allocation. The site is relatively well visually contained by the vegetation from the River Cherwell and other planting to the north and west and would not appear incongruous in longer distant views.

- 9.13. The Oxford Canal Conservation Area exists to the south and filtered views of the proposal would be visible from the Canal Tow Path, which would slightly increase the perception of commercial development from the Canal. However, these views would largely be seen in the context of the existing commercial development and are not considered to be significantly greater than the scheme already permitted on the site. Furthermore, the new building is set back further from this boundary of the site which would help reduce its prominence. The Canal and River Trust has requested details of the landscaping and boundary treatment adjacent to the canal to ensure the site is effectively screened. A Tree Report has been submitted which outlines that the trees on this boundary can largely be retained with the layout proposed. A full landscaping scheme and boundary treatment plan can be secured by planning condition to ensure that adequate additional planting is provided adjacent to the canal and other boundaries. Concerns have also been raised regarding the impact of external lighting and conditions can be used to control this matter.
- 9.14. Overall the impact of the development on the character and appearance of the area and the setting of the Canal is therefore considered to be acceptable subject to planning conditions, and the proposal thus compliant with Policy ESD15 in this regard as well as the relevant paragraphs of the NPPF.

Highways

Policy

- 9.15. Policy SLE4 of the Cherwell Local Plan Part 1 states that development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported. The NPPF has a similar and also requires that safe and suitable access is achieved for all.

Assessment

- 9.16. The proposed development would be accessed from Tramway using the same access as was previously permitted at the site and the Highway Authority have raised no objection to this. The proposed development would be served by 29 parking spaces. The Local Highway Authority (LHA) raises no objection to this but advises that given the parking provision is relatively low it is vital that opportunities for other sustainable forms of travel are taken up. The site is located within Banbury and relatively close to the centre where opportunities to access the site by cycle, walking and public transport are available.
- 9.17. There are plans to open up a new 2 way bus and taxi link between the northern end of Tramway and Banbury Train Station and these are supported by Policy Banbury 1 of the CLP and the Banbury Vision and Masterplan. As part of this new bus stops will need to be provided on Tramway and these will be funded through developer contributions and the Oxfordshire Growth Deal. The proposed development would increase the amount of people working at the site and a contribution of £25,000 is therefore sought to provide the bus stop infrastructure to encourage the use of

public transport to the site. This is similar to an earlier contribution, which was sought on the earlier approved scheme on the site and is considered to be required to make the development acceptable in planning terms. This will need to be secured by a S106.

- 9.18. The LHA also requests additional cycle parking to serve the site and amended plans have now been provided to show this. This is considered to be acceptable.
- 9.19. Overall, therefore, the proposal is acceptable in highway safety terms and in accord with Policies SLE4 and ESD15 in this regard.

Flood Risk and Drainage

Policy

- 9.20. Policy ESD6 of the Cherwell Local Plan (2011-2031) Part 1 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments towards areas at lower risk of flooding. Banbury 1 states development should take account of the Council's Strategic Flood Risk Assessment.
- 9.21. Policy ESD7 of the Cherwell Local Plan (2011-2031) Part 1 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

Assessment

- 9.22. The site lies mainly in Flood Zone 1 (the low probability of flooding 1 in 1000) however some parts of the northern and western parts of the site lie within Flood Zone 2 and 3 on the Environment Agency Flood Risk maps. The building and operational development is largely located within Flood Zone 1 however small parts of the site do impact on Flood Zone 2. The application site is part of an allocated site and therefore does not need to be subject to the sequential test for flood risk.
- 9.23. The application has been accompanied by a Flood Risk Assessment (FRA) and outline Drainage Strategy. The proposal includes the use of water butts, a below ground attenuation tank to the north of the building and a swale to the south of the site to collect run of water from the external yard area prior to discharging to the River Cherwell at greenfield rate. The drainage scheme has been designed to accommodate all storm events up to and including 1 in 100 years plus 40% climate change event and it has been demonstrated that infiltration is not possible due to ground conditions.
- 9.24. During the course of the application the applicant has provided additional information to address the concerns the Lead Local Flood Authority (LLFA) previously raised regarding water quality and the potential for the attenuation tank to be impacted by flood water or ground water. The LLFA now raises no objection to the scheme subject to conditions and the drainage scheme is therefore considered to be acceptable to officer.
- 9.25. The applicant has reviewed the modelled flood levels from the Environment Agency (EA) against the existing levels of the site which are to be developed and state that this indicates that the whole area of the site to be developed is outside the areas

liable to flood. Having considered the FRA the EA raises no objection to the scheme subject to compliance with the submitted FRA.

- 9.26. Subject to conditions securing compliance with the FRA and the submission of a detailed drainage strategy Officers are therefore satisfied the proposed development is acceptable in terms of flood risk and drainage.

Ecology Impact

Legislative context

- 9.27. 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.
- 9.28. 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.
- 9.29. 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.
- 9.30. 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.
- 9.31. 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

- 9.32. 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.
- 9.33. 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.
- 9.34. 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.
- 9.35. 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.
- 9.36. 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

- 9.37. The application site is currently undeveloped, has overgrown vegetation and is close to the river and canal and therefore has the potential to be suitable habitat for protected species.
- 9.38. 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, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the LPA should then consider whether Natural England (NE) 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. 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 NE will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether NE will grant the licence then the Council may grant planning permission.

- 9.39. The current application has been accompanied by a Preliminary Ecological Appraisal which has assessed the habitats on site. This identified a number of potential habitats on the site which could be impacted by the development. Previous surveys had identified populations of grass snake and common lizard on site and a mitigation strategy was approved as part of the earlier planning approvals on the site which included an onsite receptor area at the south eastern end of the site which would be enhanced and managed for reptiles. The current application still seeks to provide this area although it has been reduced in size but now includes larger strips of land to the north east and south western boundaries to connect to the surrounding habitats.
- 9.40. Updated Reptile Surveys have been undertaken and confirmed a small number of common lizards on the site. No other reptiles were found. The application includes a Reptile Mitigation Strategy, which includes details of establishment and management of the area of land to the south east of the site for reptiles. The Council's Ecologist has reviewed this and is satisfied with the strategy subject to conditions.
- 9.41. The applicant has also undertaken a number of other surveys relating to bats, otters and water vole and mammals which have now been submitted. The comments of the Council's Ecologist on these matters are awaited and will be updated to committee.

Residential amenity

Policy

- 9.42. Policy ESD15 of the Cherwell Local Plan Part 1 requires a good standard of amenity for future and proposed residents. Saved Policy ENV1 seeks to restrict development which would be materially harmful by way of noise or air pollution.

Assessment

- 9.43. The proposed development would be located in an established commercial area and is considered to be a sufficient distance from the closest residential properties not to unduly impact on them in terms of noise and disturbance or other impacts.
- 9.44. However, there are a number of canal boat moorings on the canal adjacent to the site which also need to be considered. The proposed development is for a light industrial use (use class B1 (C)). Such uses are classified in the Town and Country Planning (Use Classes) Order 1987 (as amended) as uses which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes or smoke. Therefore, the type of uses authorised to

operate from the site would not likely give rise to significant amenity issues for occupiers of these boats noting also that the area already has established commercial uses present. Details of any mechanical plans such as extraction equipment can be controlled by condition.

- 9.45. The Council's Environmental Protection Officer has also requested details of the measures to reduce the impact of noise and disturbance from the development from the construction and these can be controlled with a Construction Environmental Management Plan.

Other matters

- 9.46. In terms of sustainable construction, Policy BSC3 requires all new non-residential development to meet at least BREEAM 'very good' standard and this could be secured through a planning condition. It is also proposed that the provision of feasibility assessments for the provision of renewable energy provision in the development be required through condition alongside details of electrical vehicle charging points to comply with Policies ESD1-ESD5 of the CLP 2015.
- 9.47. The Canal and River Trust has requested that consideration be given by the Council to seeking contributions to upgrading the existing canal towpath and other canal infrastructure and also to providing a link between the site and canal. Whilst officers are supportive of this approach in principle, given that such contributions were not secured on the earlier permissions for development of the site, which remain extant, and the relatively small scale of the proposal it is not considered they could be justified by this proposal.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. Paragraphs 7 and 8 of the NPPF state that the purpose of the planning system is to contribute to the achievement of sustainable development. This means the planning system has three overarching objectives – economic, social and environmental – which are interdependent and need to be pursued in mutually supportive ways.
- 10.2. The proposed development would contribute to the economic, environmental and social objectives by providing a new area of employment in a sustainable location. Whilst the proposal would not accord with Policy Banbury 1 of the Cherwell Local Plan, the planning history of the site is considered to outweigh this conflict. Subject to no objection being raised by the Councils Ecologist or the Environment Agency the environment would be protected, and the visual impacts of the development are considered to be acceptable in light of the context of the site.
- 10.3. When viewed a whole the proposed development is therefore considered to constitute a sustainable form of development and it is recommended that planning permission be granted.

11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO NO OBJECTIONS BEING RAISED BY THE COUNCIL'S ECOLOGIST BY 31ST AUGUST AND SUBJECT TO THE CONDITIONS SET OUT BELOW (AND ANY

AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) **AND THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106** OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, TO SECURE THE FOLLOWING (AND ANY AMENDMENTS AS DEEMED NECESSARY):

- a) Provision of a financial contribution towards the provision of new bus stop infrastructure on Tramway Road.
- b) The safeguarding of a footpath/cycle way route on the northern boundary of the site (adjacent to the River Cherwell) and option to transfer this land to the Council at no cost to the Council

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: Application forms, Preliminary Arboricultural Assessment, Flood Risk Assessment and Drainage Strategy (issue 02), Preliminary Ecological Appraisal (May 2020), Reptile Survey (Report No: RT-MME-150960-02), Reptile Mitigation Strategy (Report No: RT-MME-150960-01 Rev A), Bat Survey (Report No: RT-NME-152681-01), Otter and Water Vole Survey and Mammal Hole Monitoring (Report RT-NME-152681-02) and drawing numbers 0700 003, 0705 008, 0706 001, 0710 003, 0771001, 0720 002, 19-088/310 P2, 19-088/311 P1.

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

Detailed Drainage Strategy

3. Development shall not begin until a detailed surface water drainage scheme for the site, in accordance with the approved Drainage Strategy drawing 19-088 / 310 P2, has been submitted to and approved in writing by the planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is occupied and shall be managed and maintained in perpetuity with the agreed details. The scheme shall also include:
 - A Flood Exceedance Conveyance Plan;
 - Detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element;
 - Explanation of “Flood” on PN 2.000 SP2

Reason: To ensure the site is appropriately drained and does not contribute to

flood risk in the locality in accordance with the National Planning Policy Framework.

4. Prior to occupation of the development hereby permitted, a record of the approved SuDS details shall be submitted to and approved in writing by the Local Planning Authority for deposit in the Lead Local Flood Authority Asset Register. The details shall include:
 - As built plans in;
 - Photographs to document each key stage of the drainage system when installed on site;
 - Photographs to document the completed installation of the drainage structures on site.

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

Arboricultural Method Statement and Protection Plan

5. No development shall commence until an Arboricultural Method Statement and Protection Plan has been submitted and approved in writing by the Local Planning Authority. The development shall not be carried out other than in strict accordance with the approved details.

Reason: To protect the existing trees and vegetation on site in the interests of visual amenity and ecology and the significance of the Oxford Canal Conservation Area. To accord with Policies ESD10, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and advice in the National Planning Policy Framework.

Construction Environmental Management Plan

6. No development shall commence until a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with approved CEMP.

Reason: To safeguard the amenity of the neighbouring occupiers including residential moorings on the Oxford Canal and to comply with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Saved Policy ENV1 of the Cherwell Local Plan 1996 and advice in the National Planning Policy Framework.

Landscaping and Boundary Treatment

7. Prior to the commencement of the development hereby approved, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-
 - (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
 - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each

tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

(c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

(d) details of the proposed boundary treatment

The development shall not be carried out other than in accordance with the approved details and the hard landscape elements shall be carried out prior to the first occupation of the development and shall be retained as such thereafter.

Reason: To protect the visual amenity and ecology of the area including the setting of the Oxford Canal Conservation Area. To accord with Policies ESD10, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

8. All planting, seeding or turfing comprised in the approved details of landscaping 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.

Electrical vehicle charging points

9. No development shall commence above slab level until a scheme for a system of ducting to allow for the future installation of electrical vehicle charging infrastructure to serve the car park or a scheme showing the provision of electrical vehicle charging points to serve the development has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details prior to the first occupation of any building.

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

Renewable Energy

10. No development shall commence above slab level until a feasibility assessment for the potential of on-site renewable energy provision has been submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the buildings hereby permitted and unless otherwise agreed in writing by the Local Planning Authority shall be retained as such thereafter.

Reason: To encourage the use of sustainable construction and renewable energy in accordance with Policy ESD1 and ESD5 of the Cherwell Local Plan and advice in the National Planning Policy Framework.

External Materials

11. No development shall commence above slab level until a schedule of materials and finishes for the external walls and roof(s) of the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved schedule and shall be retained as such thereafter.

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

Plant and machinery

12. Prior to the installation of any mechanical plant, such as extraction equipment, into any of the buildings hereby permitted, full details of its appearance, noise output and/or odour suppression shall be submitted and approved in writing by the Local Planning Authority. This may require the submission of a noise report to BS4142:2014 (or future amendments). The development shall be carried out in strict accordance with the approved details and shall be retained as such thereafter.

Reason: To safeguard the amenity of the neighbouring occupiers including residential moorings on the Oxford Canal and to comply with Policy ESD15 of the Cherwell Local Plan, Saved Policy ENV1 of the Cherwell Local Plan 1996 and advice in the National Planning Policy Framework.

External lighting

13. No external lights/floodlights shall be erected on the land or building unless a scheme of lighting including lux plans has been first submitted and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details and shall be retained as such thereafter.

Reason - In order to safeguard the amenities of the area and ecology and to comply with Policies ESD10 and ESD15 of the Cherwell Local Plan 2015, Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework

Contamination

14. If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason - This site has been previously land filled. Although the site investigation concluded that the site does not pose a threat to controlled water, there is the possibility that undetected contamination may exist on site.

15. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason - Given the land filling operation it is not possible to exclude the possibility of unexpected contamination existing on site. Details of piling operations would be required to confirm that there is no danger that contamination may be mobilized.

Flood Risk Compliance

16. The development shall not be carried out other than in accordance with the submitted Flood Risk Assessment, prepared by Bradbrook Consulting, reference 19-088, dated 10 January 2020 and the Drainage Layout and Levels Drawing, prepared by Bradbrook Consulting, reference 19-088 / 310, revision P1, dated 8 January 2020, and the following mitigation measures it details:

-Finished floor levels should be set no lower than 91.20m AOD.

-There shall be no raising of existing ground levels.

These mitigation measures shall be fully implemented prior to occupation 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 ensure the site is appropriately in respect of Flood Risk and does not contribute to flood risk in the locality in accordance with Policy ESD6 and ESD7 of the Cherwell Local Plan 2011-2031 part 1 and Government guidance in the National Planning Policy Framework.

Parking and Manoeuvring

17. The development shall not be used or occupied until the parking and manoeuvring areas have been provided in accordance with the plan hereby approved and have been constructed, laid out, surfaced, drained and completed in accordance with specification details which shall have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety and to comply with government guidance contained within the National Planning Policy Framework. Specification details are required prior to commencement of development to ensure the details are appropriate before groundwork is commenced.

Vision Splays

18. The vision splays shall not be obstructed by any object, structure, planting or other material.

Reason - In the interests of highway safety and to comply with government guidance contained within the National Planning Policy Framework.

Cycle parking

19. Prior to the first use or occupation of the development hereby permitted the cycle parking as shown on the approved plans shall be provided in accordance with the approved plans, except that they shall be covered. The said cycle parking facilities shall be permanently retained and maintained thereafter for the parking of cycles in connection with the development.

Reason - In the interests of sustainability, to ensure a satisfactory form of development and to comply with Government guidance contained within the National Planning Policy Framework.

PD withdrawal

20. Notwithstanding the provisions of Class H of Part 7, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, the approved building shall not be extended or altered without the grant of further specific planning permission from the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of the site in order to safeguard the amenities of the area in accordance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

BREEAM very good

21. The development hereby approved shall be constructed to achieve at least a BREEAM 'Very Good' rating based on the relevant BREEAM standard for that building type applicable at the time of the decision. Verification of this standard shall be submitted and approved in writing within 3 months of the first occupation of any part of the building hereby permitted

Reason - To ensure sustainable construction and reduce carbon emissions in accordance with ESD3 of the Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.