

63 Priory Road, Bicester, OX26 6BL

20/01115/OUT

Case Officer: Matthew Chadwick

Applicant: The GEM Partnership

Proposal: Demolition of existing bakery building and erection of 10no dwellings

Ward: Bicester South and Ambrosden

Councillors: Cllr Nick Cotter, Cllr Dan Sames, Cllr Lucinda Wing

Reason for Referral: Major Development

Expiry Date: 28 July 2020

Committee Date: 5 November 2020

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: REFUSE PERMISSION

Proposal

Outline planning consent is sought for the erection of ten dwellings on the site and the demolition of the existing bakery building on the site

Consultations

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

- Environment Agency, OCC Drainage, OCC Highways

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

- OCC Archaeology, Bicester Town Council, CDC Building Control, OCC Education, CDC Environmental Health, CDC Landscape Services, CDC Recreation and Leisure, CDC Strategic Housing, Thames Valley Police Design Adviser, Thames Water

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

- CDC Strategic Housing

4 letters of objection have been received.

Planning Policy and Constraints

The site lies in close proximity to the Bicester Conservation Area and is within an area of potentially contaminated land. The site is also in area of archaeological interest.

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

Conclusion

The key issues arising from the application details are:

- Principle of development
- Housing density
- Affordable housing
- Design, and impact on the character of the area

- Residential amenity
- Highway safety
- Flood risk and drainage
- Ecology impact
- Infrastructure

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

1. Principle of development
2. Insufficient refuse collection arrangement
3. No S106 agreement and lack of affordable housing

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

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located in the south of Bicester. The site is located at the end of Priory Road which is a residential street. The site is currently occupied by the Nash's Bakery, which is a two-storey building finished in metal cladding. To the north and west of the site is residential development and to the south and east is part of the car parking area for Bicester Village train station.

2. CONSTRAINTS

- 2.1. The application site lies in close proximity to the Bicester Conservation Area and is within an area of potentially contaminated land. The site is also in area of archaeological interest. To the west of the site is a stream and land that is within Flood Zones 2 and 3.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. Outline planning consent is sought for the demolition of the existing bakery building and the erection of ten dwellings. The application seeks approval of the access and layout of the development. The development would take access from the existing access onto Priory Road in the northeast corner of the site. The layout of the proposed development would be that of three pairs of semi-detached dwellings in the south of the site and a single block forming four flats in the west of the site. The residential units would face towards a parking and turning area which has 19 parking spaces. A cycle/bin store building is proposed in the south-east corner of the site.
- 3.2. Indicative elevations have been submitted with the application. The buildings would be constructed from brickwork and render, with tiled roofs.

4. RELEVANT PLANNING HISTORY

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

RM.CHS.270/84 – Improvement to Priory Road. Residential development with access, erection of 540m² industrial unit with access and parking together with turning area – Application Permitted

05/01738/OUT – Outline: Residential development – Application Withdrawn

08/00869/F - Demolition of redundant buildings and erection of 73 no. two and three storey residential dwellings – Application Withdrawn (this application covered the application site and land to the south)

5. PRE-APPLICATION DISCUSSIONS

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

5.2. 19/02302/PREAPP – Residential development of 13 flats

The report concluded that the proposal was unacceptable in principle due to the loss of employment which has not been fully justified. No information regarding a site to which the business would be relocated to has been provided. Alternative premises would need to be found to link to a future consent.

It was advised that the layout needed to be amended to accommodate the strategic housing team requirements as well as providing turning and manoeuvring space for vehicles.

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 **25 May 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:

- The development would cause overshadowing and a loss of privacy.
- The layout and density of the development is not acceptable.
- There would be extra noise and disturbance from the development.
- There would be significant overlooking.
- There will be an increase in on-street parking.
- Concerns regarding trees.

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. BICESTER TOWN COUNCIL: **No objections.**

OTHER CONSULTEES

- 7.3. ENVIRONMENT AGENCY: **Objects**, as no flood risk assessment has been submitted.
- 7.4. OCC DRAINAGE: **Objects**. There is insufficient information to provide a full technical assessment of the flood risk, surface water drainage strategy and SuDS implementation for the proposal.
- 7.5. OCC HIGHWAYS: **Objects**, as it has not been demonstrated how refuse and recycling may be collected from the site.
- 7.6. THAMES WATER: **No objections.**
- 7.7. CDC LANDSCAPE SERVICES: There is limited information on landscaping. The layout is dominated by car parking. A LAP should be provided on the site.
- 7.8. CDC ENVIRONMENTAL PROTECTION: **No objections**, subject to conditions relating to the submission of a CEMP, contaminated land information and the provision of electric vehicle charging infrastructure.
- 7.9. OCC ARCHAEOLOGY: **No objections**, subject to conditions relating to a written scheme of investigation and a programme of archaeological evaluation and mitigation.
- 7.10. OCC EDUCATION: **No objections**, subject to section 106 contributions.
- 7.11. CDC STRATEGIC HOUSING: **No objections.**
- 7.12. CDC BUILDING CONTROL: Development would require a building regulations application. Facilities and access for fire fighting vehicles to reflect guidance in Approved Document B5. Access and inclusive design to reflect guidance in Approved Document M.
- 7.13. CDC RECREATION AND LEISURE: **No objections**, subject to section 106 contributions.
- 7.14. THAMES VALLEY POLICE DESIGN ADVISER: **No objections** but raises a number of comments and requests a condition requiring an application for Secured by Design accreditation.

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 2015)

- PSD1: Presumption in favour of sustainable development
- SLE1: Employment development
- BSC1: District Wide Housing Development
- BSC2: The effective and efficient use of land
- BSC3: Affordable housing
- BSC4: Housing Mix
- ESD1: Mitigation and adapting to climate change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD4: Decentralised Energy Systems
- ESD5: Renewable Energy
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SUDs)
- ESD10: Protection and enhancement of biodiversity and the natural environment
- ESD15: The character of the built and historic environment
- Policy Bicester 5: Strengthening Bicester Town Centre

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C30: Design of new residential development
- ENV12: Contaminated Land

8.3. Other Material Planning Considerations

- 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
- Housing density
- Affordable housing
- Design, and impact on the character of the area
- Residential amenity
- Highway safety

- Flood risk and drainage
- Ecological impact
- Heritage impact
- Infrastructure
- Other matters

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.

Policy Context

- 9.3. Paragraph 12 of the National Planning Policy Framework (NPPF) makes clear that it does not change the statutory status of the development plan as the starting point for decision making. Proposed development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. Cherwell has an up to date Local Plan and can demonstrate a 5 year housing land supply. However, the NPPF is a significant material consideration.
- 9.4. Paragraph 11 of the NPPF explains the Government's presumption in favour of sustainable development. For decision-taking this means approving proposals that accord with an up to date development plan and in cases where there are either no relevant development plan policies or those policies important for determining the application are out of date, granting permission unless the NPPF policies provide a clear reason for refusal or any adverse impacts significantly and demonstrably outweigh the benefits.
- 9.5. The Development Plan comprises the saved policies of the 1996 Cherwell Local Plan (CLP 1996) and the 2015 adopted Cherwell Local Plan (CLP 2015). The policies important for determining this application are referenced above.
- 9.6. Policy PSD1 of the CLP 2015 accords with the NPPF's requirement for sustainable development and that planning applications that accord with policies in the statutory Development Plan will be approved without delay.
- 9.7. The CLP 2015 seeks to allocate sufficient land to meet District Wide Housing needs. The overall housing strategy is to focus housing growth at the towns of Bicester and Banbury.
- 9.8. Policy SLE1 of the CLP 2015 states that where planning permission is required for the replacement of employment sites with residential development, existing employment sites should be retained for employment use unless the following criteria are met:
- the applicant can demonstrate that an employment use should not be retained, including showing the site has been marketed and has been vacant in the long term.
 - the applicant can demonstrate that there are valid reasons why the use of the site for the existing or another employment use is not economically viable.

- the applicant can demonstrate that the proposal would not have the effect of limiting the amount of land available for employment.
- 9.9. The policy goes on to state that regard will be had to whether the applicant can demonstrate that there are other planning objectives that would outweigh the value of retaining the site in an employment use.
- 9.10. The Local Plan at paragraph B.48 states that the provision or the loss of jobs will be a material consideration for determining proposals for any use classes.

Assessment

- 9.11. The Council's 2019 Annual Monitoring Report (AMR) confirms that the District can demonstrate a 4.4 years housing land supply. In the circumstances that a LPA cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer), there is a presumption in favour of sustainable development and ordinarily the circumstances at paragraph 11d of the NPPF are engaged – in short development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 9.12. However, in respect of the Oxfordshire Authorities including Cherwell there is a Written Ministerial Statement ("WMS") made in September 2018 concerning the Housing and Growth Deal, which is a significant material consideration. This sets out the requirement for a 3 year (rather than 5 year) supply of deliverable housing sites (with the appropriate buffer) from the date it was made (12/09/2018) until the adoption of the Joint Statutory Spatial Plan in each area, providing the timescales in the Housing and Growth Deal are adhered to. Therefore, in this case, the tilted balance set out by Paragraph 11d is not engaged because the Housing Supply requirement for the District should be taken to be 3 years in accordance with the WMS.
- 9.13. Whilst the Council can demonstrate a 3 year housing land supply, significant weight is still afforded to benefits of providing housing to contribute towards meeting the requirements of Local Plan Part 1, meeting the housing needs of the area and contributing towards meeting the need of the Oxfordshire Growth deal.
- 9.14. Given the site's location within the built limits of Bicester and close to the town's amenities, the broad principle of residential development on the site is considered acceptable. However, the site is an employment provider so Policy SLE1 is relevant and it is therefore necessary to consider the loss of the bakery business on the site.
- 9.15. The first criterion of Policy SLE1 is for the applicant to demonstrate that an employment use should not be retained, including showing the site has been marketed and has been vacant in the long term. The site has not been marketed. The applicant had submitted a pre-app enquiry for residential development of the site and in the Council's response 10 months ago officers set out that the site would either need to be marketed or alternative premises would need to be secured, so that any planning consent could be linked to the new premises to ensure that the employment use would not be lost.
- 9.16. Despite discussions with the applicant's agent throughout the course of the application, no alternative premises have been secured, or even put forward, by the applicant. Therefore, if the application were to be approved there would be no way of securing the future of the bakery business and jobs could be potentially lost and, aside from who occupies the premises, an important employment use would be lost.

- 9.17. In the absence of any marketing information or alternative premises for the business to relocate to and secure with a legal agreement, it is considered that the principle of development is unacceptable, due to the loss of an employment site.

Conclusion

- 9.18. For the reasons set out above, the proposed development fails to comply with Policy SLE1 of the Cherwell Local Plan 2011 – 2031 and Government guidance in the NPPF. The principle of development is therefore considered to be unacceptable.

Housing density and mix

Policy Context

- 9.19. 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 CLP 2031 echoes the aims of the NPPF requiring new residential development to provide a mix of homes in the interests of meeting housing need and creating socially mixed and inclusive communities.
- 9.20. 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'.
- 9.21. Policy BSC2 of the Cherwell Local Plan 2011 – 2031 states that housing development in Cherwell will be expected to make effective and efficient use of land. The Council will encourage the re-use of previously developed land in sustainable locations. New housing should be provided on net developable areas at a density of at least 30 dwellings per hectare unless there are justifiable planning reasons for lower density development.
- 9.22. Policy BSC3 of the Cherwell Local Plan 2011 – 2031 states that at Banbury and Bicester, all proposed developments that include 11 or more dwellings (gross), or which would be provided on sites suitable for 11 or more dwellings (gross), will be expected to provide at least 30% of new housing as affordable homes on site.
- 9.23. Policy BSC4 of the Cherwell Local Plan 2011 – 2031 reflects the requirements of the NPPF and states that: 'New residential development will be expected to provide a mix of homes to meet current and expected future requirements' and 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'.

Assessment

- 9.24. Both local and national policy supports the provision of affordable housing on site that would be suitable for 11 or more dwellings. The pre-application enquiry sought advice for 13 dwellings and it is considered that the site could accommodate at least eleven dwellings, given the site's sustainable location and that there are significant areas of land that would remain undeveloped on the site. It is considered that the layout of the development could be redesigned so that at least one additional dwelling could be accommodated on the site of the currently proposed cycle and bin storage building. This building could then be relocated elsewhere within the site. Indeed, the pre-app proposals, which with some minor alterations would have

achieved a satisfactory layout, show that 13 dwellings can be delivered on the site. A scheme of 13 would comprise 9 market houses and 4 affordable.

- 9.25. This issue has been put to the applicant's agent, who has stated that there is no capacity for the site to accommodate any further residential units. Officers disagree with this view for the reasons set out above. The response of the applicant's agent appears to rely on the advice of the Council's housing team that the affordable units should not be flats, but there is no reason why the flats cannot be open market units and, for example, a terrace of four, two-storey dwellings cannot be provided as Affordable Housing.
- 9.26. If the scheme were otherwise considered acceptable, a financial contribution towards affordable housing or the provision of on-site affordable housing could be secured. Given that there are in principle concerns with the scheme as currently proposed, no progress has been made on a Section 106 agreement to secure financial contributions.
- 9.27. The site has an area of c.0.25 hectares and 10 dwellings are proposed, which gives the development a density of 41 dwellings per hectare. This would be in excess of the *minimum* housing density set out within Policy BSC2 of the Cherwell Local Plan 2011 – 2031. However, given the site's highly sustainable location and that the proposals subject of the pre-application enquiry were for a greater number of dwellings and showed that a greater number of dwellings could be satisfactorily delivered on the site and given the lack of affordable housing, the proposals do not make effective and efficient use of land.

Conclusion

- 9.28. It is considered that the development would fail to make an effective and efficient use of land and in the absence of any affordable housing provided on site or a financial contribution towards affordable housing off-site, it is considered that the proposal fails to comply with Policies BSC2 and BSC3 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the NPPF and is unacceptable in this regard.

Design and impact on the character of the area

Policy Context

- 9.29. Government guidance contained within the NPPF towards achieving well-designed places states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The NPPG goes on to note that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Further, Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.
- 9.30. Paragraph 127 of the NPPF states that planning decisions should ensure that developments:
- Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
 - Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

- Are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change;
- Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- Optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks;
- Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. 9.25.

9.31. Policy ESD15 of the Cherwell Local Plan Part 1 states that: “New development proposals should:

- Contribute positively to an area’s character and identity by creating or reinforcing local distinctiveness and respecting local topography, including skylines, valley floors, significant trees, historic boundaries, landmarks, features or views.
- Respect the traditional pattern 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 defined active public frontages.”

Assessment

9.32. Access and the layout of the development are matters to be assessed in this application. The site layout plan shows three pairs of two storey, semi-detached dwellings on the southern side of the site and a two-storey building accommodating four flats in the western part of the site. The access would be taken from Priory Road to the northeast, which would lead directly onto a parking court. The indicative elevations show the dwellings to be externally faced in render and brickwork with tiled roofs.

9.33. Locating the parking in the centre of the site and the dwellings to the edges of the site can optimise the number of dwellings to be achieved on the site. However, the proposed layout would be dominated by hardstanding. It is acknowledged that landscaping, which could soften its impact to some extent, is a reserved matter. In addition, the site is a brownfield site that has a significant amount of hardstanding, and the bakery building has an industrial design. It is also important that the layout helps to optimise the density of the development. It is therefore considered that the proposed development would have no more of a harmful impact on the character and appearance of the area than the current building and hardstanding. The same conclusion would be true of a similar layout which achieved c.13 dwellings.

9.34. The development would be located to the rear of Priory Court, which is a cul-de-sac. The provision of another cul-de-sac to the rear of this is not ideal in design terms; however, the pattern of development in the area is very mixed. There are several backland developments in the surrounding area and there are significant constraints to the site’s context as to whether there is any realistic alternative. Therefore, it is considered that the principle of a backland and/or cul de sac development would not be significantly harmful to the character and appearance of the area.

Conclusion

- 9.35. The proposed layout would not cause significant harm to the character and appearance of the area and would comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

Residential amenity

Policy Context

- 9.36. 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.
- 9.37. The Cherwell Residential Design Guide states that a minimum distance of 22m back to back, between properties must be maintained and a minimum of 14m distance is required from rear elevation to two storey side gable.

Assessment

- 9.38. The dwellings in the south of the site would be sited a significant distance away from any residential development and it considered that these would have no impact on nearby dwellings. The smallest of the rear gardens of these properties would be 5m in depth. This is a small rear garden for such a dwelling; however, given the site's location close to the town centre, and with open space and recreation land available in the vicinity, an amenity area of this size is considered to be acceptable.
- 9.39. The proposed flats would be located 12m to the south of 3 Priory Court. This separation distance is below that set out in the Cherwell Residential Design Guide. However, the due to orientation of 3 Priory Court, the rear elevation of the dwelling would not face directly towards the flats. The proposed development would have a significant impact on this neighbour through loss of light and outlook and would be somewhat overbearing to the neighbouring dwelling, and this weighs against the proposals, but given the orientation of the buildings it is considered that the adverse effects would not be so significant to justify a reason for refusal on this basis alone. The impact on outlook should be mitigated through hipping of the roof to the proposed flats. To avoid overlooking of the nearby property, a condition could be imposed to ensure that no windows of the flats in the northern elevation overlooked the neighbouring property.

Conclusion

- 9.40. Subject to further details of the appearance, landscaping and scale of the development and conditions, the proposals would not cause significant harm to the amenities of neighbours and would comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031, Saved Policy C30 of the Cherwell Local Plan 1996 and Government guidance contained within the NPPF.

Highway safety

Policy Context

- 9.41. 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.
- 9.42. The NPPF (Para. 108) advises that in assessing specific applications for development, it should be ensured that: a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) 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.
- 9.43. 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

- 9.44. Access is a matter for consideration under this outline application. The existing access onto Priory Road in the northeast of the site would be utilised. The Highways Officer has offered no objections to the proposals for access, subject to conditions. The Highways Officer has not objected to the amount of parking provision proposed.
- 9.45. However, the Highways Officer has objected to the refuse and recycling collection arrangement. The Site Layout Plan indicates the turning movement of a vehicle that is approximately 8m long, whereas the Refuse Collection Vehicles (RCVs) used by Cherwell DC are 11.6m overall. From the submitted layout, it would appear that the only way for the RCV to access the site would be by either entering or exiting in reverse gear, which is a safety risk and contrary to the advice in the Manual for Streets. It has therefore not been demonstrated that the proposed layout would provide a safe access for Refuse Collection Vehicles and the development would therefore cause harm to the safety of the highway network. It is acknowledged that amending the layout to address this issue may result in yet more hardstanding. Such matters would need to be considered as part of any amended layout and mitigated appropriately through design and landscaping.

Conclusion

- 9.46. The proposed development would fail to provide a safe and suitable refuse collection arrangement and would therefore fail to comply with Policies ESD15 and SLE4 of the Cherwell Local Plan 2011 – 2031 and Government guidance contained within the NPPF.

Flood risk and drainage

Policy Context

- 9.47. 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.

- 9.48. 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

- 9.49. The Environment Agency has objected to the scheme as no flood risk assessment has been submitted. Flood Zones 2 and 3 are located immediately to the west of the site but as the site is located in Flood Zone 1 and is less than 1 hectare in size a flood risk assessment is not required.
- 9.50. The OCC Drainage Engineer has objected to the scheme due a lack of information. No drainage scheme has been submitted with the application. In the absence of an appropriate drainage scheme, it is considered that it has not been demonstrated that a sustainable drainage strategy for the site can be delivered and that the development would not be acceptable in this regard.

Conclusion

- 9.51. Officers consider that, in light of the technical objection raised by the LLFA, the proposals have failed to demonstrate that appropriate surface water drainage scheme for the site, based on sustainable drainage principles, can be achieved; the proposals are therefore not considered to be in accordance with Policy ESD7 of the Cherwell Local Plan 2011 – 2031 and are not acceptable in terms of flood-risk and drainage.

Ecological Impact

Legislative context

- 9.52. 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.
- 9.53. 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.
- 9.54. 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.

9.55. 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.

9.56. 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

9.57. 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.

9.58. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) 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.

9.59. 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.

9.60. 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.

- 9.61. Policy ESD11 is concerned with Conservation Target Areas (CTAs), and requires all development proposals within or adjacent CTAs to be accompanied by a biodiversity survey and a report identifying constraints and opportunities for biodiversity enhancement.
- 9.62. 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.
- 9.63. 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

- 9.64. 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 LPAs can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
 - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 9.65. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains buildings of traditional construction, is close to a stream and there are a number of mature trees and hedgerows within and adjacent the site, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.
- 9.66. 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 (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.
- 9.67. 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.

- 9.68. The application is supported by a preliminary ecological appraisal which concluded that the habitats on site are of limited ecological value, none are priority habitats, and it is very unlikely that other protected species will be affected by the proposals.
- 9.69. The stream which runs next to the western site boundary fits the “priority habitat” description for “Rivers”. It is recommended in the ecological appraisal that a temporary Heras fence running parallel to, but 10m from, the stream is erected prior to works commencing and retained in place until all building works are completed. Once constructed, as the new buildings are more than 10m from the nearby stream, and as long as there is no increase in lighting onto the stream, the proposals are very unlikely to adversely affect the Town Brook.
- 9.70. The Council’s Ecology Officer has not commented on the proposals. However, on the basis of the information submitted and subject to conditions, it is considered that the welfare of any European Protected Species found to be present at the site and surrounding land would continue and be safeguarded notwithstanding the proposed development, and that the Council’s statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017 have been met and discharged.

Conclusion

- 9.71. It is therefore considered that the proposed development complies with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 and Government guidance contained within the NPPF and is acceptable in this regard.

Infrastructure

- 9.72. New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. National planning policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost, of all or part of the additional infrastructure/service provision that would not have been necessary but for their development. Planning Obligations are the mechanism used to secure these measures.
- 9.73. Policy INF1 of the CLP 2015 states that: “Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.”
- 9.74. Policy BSC11 of the CLP 2015 states that: “Development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in ‘Local Standards of Provision – Outdoor Recreation’. Where this is not possible or appropriate, a financial contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement.” Policy BSC12 requires new development to contribute to indoor sport, recreation and community facilities.
- 9.75. The Developer Contributions Supplementary Planning Document (SPD February 2018) sets out its position in respect of requiring financial and on site contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on

existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

- 9.76. The CDC Recreation and Leisure team has requested £9,458.90 towards Community Hall Facilities, £16,697.10 towards Outdoor Sport Provision and £6,907.60 towards Indoor Sport Provision. OCC Education has requested a contribution of £41,268 towards the expansion of Longfields Primary School. Payment of a financial contribution towards the provision of refuse/recycling bins for the development would also be required.
- 9.77. The proposal would be required by policy to provide general green space and a Local Area of Play. It is unclear where these could be provided on site. However, at the current time discussions with the applicant have not been advanced in this matter due to the principle objections that relate to the site. Therefore at the current time in the absence of a legal agreement that secure these matters the proposal conflicts with Policies, BSC7, BSC10 and BSC11 of the CLP 2015 as they do not make adequate provision for the education, open space and recreational demands imposed by the development.

Other matters

- 9.78. The OCC Archaeology officer has offered no objections to the proposal, subject to conditions. It is considered that the development could be considered acceptable in this regard, subject to these conditions.
- 9.79. The Environmental Protection Officer has offered no objections, subject to the submission of a CEMP, contaminated land information and the provision of electric vehicle charging infrastructure. The development could be considered acceptable in these matters, subject to these conditions.

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. The proposed development would be located in a sustainable location close to the town centre of Bicester, but the loss of the existing employment site has not been justified. The site has not been marketed as required by Policy SLE1 and no alternative premises have been secured. Therefore, the proposed development would result in the loss of an employment site. The proposal is contrary to Policy SLE1.
- 10.3. No affordable housing has been proposed on a site that is considered to be suitable for eleven dwellings or more. In the absence of any affordable housing provided on site or a financial contribution towards affordable housing off-site, it is considered that the proposed development fails to comply with Policy BSC3.
- 10.4. The proposed layout is not considered to be acceptable with regard to the refuse collection scheme; and there is no legal agreement in place.
- 10.5. The proposals would provide additional housing (attracting significant weight) although the non-provision of affordable housing reduces the weight to be attributed to this benefit of providing additional housing is reduced. The proposals are likely to provide some economic benefits to the local construction industry during construction (which attracts limited to moderate weight). It is considered that the

scheme's benefits would be significantly and demonstrably outweighed by the significant economic harm which would be caused by the proposal particularly in light of the Council's ability to demonstrate a 3 year land supply and the lack of justification over the loss of the employment site.

10.6. It is therefore recommended that planning permission be refused for the reasons outlined below.

11. RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW

REASONS FOR REFUSAL

1. It has not been clearly demonstrated that the employment use should not be retained. The site has not been marketed and no alternative premises have been secured. The proposed development would therefore result in the loss of an employment site. The proposal is therefore contrary to Policy SLE1 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance in the National Planning Policy Framework.

2. The proposed development would not make effective and efficient use of land and is suitable for 11 or more dwellings and would not include the provision of affordable homes on site. The proposal is therefore contrary to Policies BSC2 and BSC3 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance in the National Planning Policy Framework.

3. The submitted layout is inadequate with regard to the refuse recycling and collection arrangement. It has not been demonstrated that the refuse collection vehicle would be able to safely manoeuvre within the site and this would cause harm to the safety of the highway network and to the amenity of future residents through the non-collection of refuse. The proposal is therefore contrary to Policy ESD7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

4. By virtue of a lack of supporting information to enable an appropriate technical assessment the proposals have failed to demonstrate that an appropriate sustainable drainage strategy for the site utilising sustainable drainage systems (SuDS) can be delivered. As such the proposal is contrary to Policy ESD7 of the Cherwell Local Plan 2011 - 2031 Part 1 Government guidance contained within the National Planning Policy Framework.

5. In the absence of the completion of a satisfactory Planning Obligation, the Local Planning Authority is not convinced that the necessary infrastructure directly required as a result of this development, in the interests of providing affordable housing and in the interests of safeguarding public infrastructure and securing on site future maintenance arrangements, will be provided. The proposal therefore conflicts with Policies BSC3 and INF1 of the adopted Cherwell Local Plan 2011-2031 Part 1 and Government advice within the National Planning Policy Framework.

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