

Case Officer: Bob Neville

Applicant: Certas Energy Limited and FINSCO Property Company

Proposal: A fuel depot including ancillary offices, the installation of plant and hardstanding

Ward: Cropredy, Sibfords And Wroxton

Councillors: Cllr Phil Chapman, Cllr George Reynolds, Cllr Douglas Webb

Reason for Referral: In light of significant public interest

Expiry Date: 03 November 2020 **Extension of Time:** 15 December 2020

Committee Date: 10 December 2020

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: REFUSE PERMISSION

Proposal

The application seeks planning permission for the development of a fuel oil storage and distribution depot with ancillary offices, with associated installation of plant, hardstanding security fencing, lighting and landscaping.

Consultations

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

- Drayton Parish Council, Horton Parish Council, Wroxton and Balscote Parish Council, Campaign to Protect Rural England, Cotswolds Conservation Board, Landscape Officer (CDC), Lead Local Flood Authority (OCC), Local Highway Authority (OCC).

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

- Archaeology (OCC), Building Control (CDC), Ecology (CDC), Environment Agency, Environmental Protection (CDC), Stratford-on-Avon DC, Warwickshire County Council Highways.

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

- Banbury Town Council

131 letters of objection have been received, 1 letter of comment and 1 letter of support have been received.

Planning Policy and Constraints

In terms of site constraints, the site is part of a former quarry sitting in open countryside with the surrounding land classified by Natural England as Grade 1 (excellent) agricultural land. The site is within an area where the geology is known to contain naturally occurring elevated levels of Arsenic Chromium and Nickel; as is seen in many areas across the district; and also an area affected by Radon Gas.

Hornton Grounds Farmhouse lies some 330m south-east of the site and is a grade II listed

building.

The Sor Brook rivers flows approximately 3.35km east of the site and a tributary from the brook is located approximately 0.75km to the south.

A Public Right of Way (PRoW) ref. Bridleway 255/5/10 (part of the D'Arcy Dalton route) runs across land south/south-east of the site. A further PRoW ref. Footpath 255/6/10 crosses land north of the site.

The boundary of the Cotswolds Area of Outstanding Natural Beauty lies approximately 250m west of the site (at its nearest point).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; including landscape impact
- Heritage Impact
- Highway safety
- Residential amenity
- Ecology and Biodiversity
- Drainage and Flood-risk

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

1. The proposals represent inappropriate and unjustified development within the rural countryside.
2. Adverse visual impact.
3. Adverse impacts on highway safety.
4. Adverse harm arising from the significant increase in HGV movements on the amenity of residential areas and villages.
5. It has not been satisfactorily demonstrated that a sustainable drainage strategy could be achieved, such that proposals would not have an adverse impact on water quality.

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 part of a former quarry site, located on flat ground some 1km (0.6 miles) west of the village of Hornton, within countryside and on the edge of the District. Adjacent to the west of the site is an existing stone processing and cutting yard. The stone processing yard is accessed from the A422 (Stratford Road) by an existing haulage road. Bunding and landscaping (that has previously been developed at the site in connection with previous consents) exists to the north and

east of the boundaries of the site. A mature hedgerow and farm access track lies along the southern boundary of the site.

- 1.2. At the time of the application the site appears to have previously been cleared with limited vegetation within the site, potentially in preparation for future development of the site for a conservation stone yard area for the processing of stone under Class B2 (approved under consents 14/01286/CM and 16/01155/CM as detailed below). Land adjacent to the east of the site benefits from an extant planning permission for 3no agricultural buildings (17/01109/F).

2. CONSTRAINTS

- 2.1. The site is part of a former quarry; the surrounding land is classified by Natural England as Grade 1 (excellent) agricultural land. The site is within an area where the geology is known to contain naturally occurring elevated levels of Arsenic Chromium and Nickel; as is seen in many areas across the district; and also an area affected by Radon Gas.
- 2.2. Hornton Grounds Farmhouse, a grade II listed building, lies some 330m south-east of the site.
- 2.3. The boundary of the Cotswolds Area of Outstanding Natural Beauty lies approximately 250m west of the site (at its nearest point).
- 2.4. A Public Right of Way (PRoW) ref. Bridleway 255/5/10 (part of the D'Arcy Dalton route) runs across land south/south-east of the site. A further PRoW ref. Footpath 255/6/10 crosses land north of the site.
- 2.5. The Sor Brook rivers flows approximately 3.35km east of the site and a tributary from the brook is located approximately 0.75km to the south.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The application seeks planning permission for the development of a fuel oil storage and distribution depot with ancillary offices, the installation of plant and hardstanding. The proposals include six double skinned horizontal steel fuel storage tanks with loading gantry (5.2m high inc. access/loading gantry). The tanks would each have a capacity of 125,000 litres. Fuel stored would be diesel (diesel oil for road vehicles and gas oil) and kerosene and would be housed within a purpose-built concrete bund. There would also be two smaller, ancillary above-ground tanks; 1no. 'Glowmax' (kerosene additive) tank of 6,000 litres and 1no Company own Consumption (CoC) tank to refuel tankers with DERV which will have a capacity of 2,500 litres.
- 3.2. The proposals include ancillary office building (measuring 33m x 7.2m x 3.2m) and boundary enclosures (2.4m high) with 10no 5m high security lighting columns. The proposal would include both operational parking for 15no tankers and 19no staff/visitor parking spaces. The applicant indicates that the site would be accessed via the existing access road off the Stratford Road, albeit that the site (as defined by the red line) does not extend to the highway (see below).
- 3.3. Some limited landscaping is also proposed to the south of the site, including reinforcement of the existing hedgerow south of the site.
- 3.4. In terms of site operations, the supporting Transport Statement (TS) sets out that: *'A total of 17 staff members will be employed as part of the site operations. Fourteen drivers will work one shift per day from Monday to Friday over a 24-hour period with seven drivers employed on a Saturday from 06:00 to 18:00'.*
- 3.5. Further, *'It is estimated that up to 158 fuel tanker trips will be generated per week; this equates to an average of only 29 trips per day based on a week of five and a half days. This includes the smaller depot tankers delivering fuel to locations within a*

50-mile radius of Banbury from Monday to Saturday, as well as the larger articulated tanker trucks bringing fuel to the depot from Monday to Sunday’.

- 3.6. During the application officers highlighted to the applicant’s agent that the site did not include all land necessary for the proposed development i.e. access up to the adopted highway and all land necessary for appropriate vision splays to be demonstrated and maintained going forward. The proposals are for a fuel distribution facility and as such access is a fundamental component of the proposals. This error in the application would make the application technically invalid. It would be noted by a Planning Inspector at appeal and an appeal would be dismissed on this basis even if the proposal was acceptable in all other respects.
- 3.7. Further, officers noted to the applicant’s agent that these changes to the red line site area would require a different certificate of ownership (Certificate B) to be completed; i.e. notice would need to be served on all relevant parties having an interest in respect of additional land that needs to be incorporated in to the application’s site boundary (including access up to the adopted highway).
- 3.8. An extension of time was agreed with the applicant’s agent to allow them opportunity to respond to a number of concerns and issues that have been raised during the application. Despite the agent’s indicating that the issues raised would be addressed, regrettably no further/revised information had been submitted and no substantive response to the issues raised by officers had been received at the time of the preparation of this recommendation.
- 3.9. On Monday 30th November the applicant’s agent submitted some additional information, comprising a covering letter, a revised Flood Risk Assessment, a statement considering alternative sites and changes to the proposed use, with accompanying amended Transport Statement, Route Management Plan and site plans. This has been submitted too late to be considered in the context of the current application; there is insufficient time before the revised target date to consult on this amended set of information and it is reasonable for all parties to expect a decision to be made in a timely manner. Further, it is the Council’s protocol not to negotiate during the application process, particularly this late in the process, when there are significant or fundamental issues with a proposal.
- 3.10. As such the proposals have been assessed and recommendation made on the basis of the details submitted with the application; and the issue of the application’s site boundary remains unresolved at this time. Officers have encouraged the applicant’s agent to withdraw the application but this invitation has not been taken up.

4. RELEVANT PLANNING HISTORY

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

Application: 00/01017/F Permitted 11 August 2000

Erection of gable extension to existing building to house stone cutting saw

Application: 11/00571/F Permitted 15 July 2011

Erection of agricultural buildings comprising of grain store, general purpose building and livestock building with associated hardstanding, landscaping and gravel access track

Application: 12/00798/F Permitted 24 July 2012

Retention of roadway to serve agricultural buildings permitted by Planning

Permission 11/00571/F

Application: 14/01284/CM No Objections 3 September 2014

Retention of existing structures and buildings as Class B2 of the Town and Country Planning (Use Classes) Order 1987 (OCC Ref MW.0088/14)

Application: 14/01286/CM No Objections 3 September 2014

Outline Planning Permission for the conservation stone yard area for the processing of stone as class B2 of the Town and Country Planning (Use Classes) Order 1987 (OCC Ref MW.0090/14)

Application: 16/00752/F Permitted 4 November 2016

Erection of new agricultural buildings

Application: 17/01109/F Permitted 17 October 2017

Variation of condition 2 of 16/00752/F - To allow for the relocation of the approved agricultural buildings within the established red line boundary.

Application: 16/01155/CM No Objections 8 July 2016

Outline planning permission for the conservation stone yard area for the processing of stone as Class B2 of the Town and Country Planning (Use Classes) Order 1987

Application: 17/02553/CM No Objections 12 January 2018

Reserved matters pursuant to condition 2 of planning permission 14/01286/CM which granted permission for B2 use - OCC ref:- MW.0106/17

Application: 17/02552/CM No Objections 12 January 2018

Reserved matters pursuant to Condition 2 of planning permission 16/01155/CM – OCC ref: - MW.0105/17

Application: 17/02552/CM Permitted 12 January 2018

Erection of an internal boundary wall (Part retrospective)

5. PRE-APPLICATION DISCUSSIONS

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

19/02746/PREAPP - Due to a lack of information submitted at the pre-application stage officers did not offer a definitive opinion as to whether a future planning application could be supported for the proposals as detailed within the enquiry. However, significant concerns were raised in respect of the site's environmentally unsustainable location, as well as the potential transport issues and detrimental impacts on the valued rural landscape discussed above. It was highlighted that there would appear to be significant conflict with both the policies of the development plan and national policy guidance, and it was advised that unless it can be demonstrated that any such harm would not be significant or that it would be outweighed by potential benefits of the proposals, it was unlikely that a future planning application could be supported. Response issued 15/01/2020.

6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site 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 **23 November 2020**; although comments received after this date and before finalising this report have also been taken into account.
- 6.2. 131no letters of objection, 1no letter of comment and 1no letter of support have been received during the application. The comments raised by third parties are summarised as follows:

Support:

- The site is a brownfield site and committed employment land. The development would provide new investment and jobs and would enable the current brownfield site that is occupied by Certas that is in a highly sustainable location in the centre of Banbury to be developed for high density housing- thereby reducing the requirement for greenfield land.
- The company provides a useful service to the surrounding community in the supply of heating fuel.
- The operation would be highly regulated by the planning and environmental processes to ensure that is safe.

Comment:

- The conclusions of the submitted Transport Statement that the proposals would have a "negligible impact on the local highway network and villages surrounding them" are disputable; given that the A422 road goes directly through two villages (Wroxton and Drayton) and includes something close to a 90 degree bend in Wroxton village where the road also narrows considerably.

Objection:

- Inappropriate location for a fuel storage depot in 24/7 operation, that would not be consistent with the tranquil rural character and appearance of the area and would be to the detriment of the area.
- The countryside needs to be protected. The application is contrary to Cherwell District Council July 2020 review of the Local Plan to 2040, which stressed the importance of protecting 'valued landscapes' and 'areas of tranquillity'.
- Detrimental impacts on the amenities of neighbouring properties including Grade II listed Hornton Grounds Farmhouse, and properties within the villages along the Stratford Road (A422).
- It doesn't appear that any other alternative sites for this installation have been considered. Proposals should be located in a more sustainable location with better links to the wider road network.
- Any potential benefits of the proposals (i.e. relocation of the existing business from Banbury Town Centre) would not outweigh the significant environmental harm that would be caused by the proposals.
- Similar proposals were refused at a nearby site at Shenington Business Park; these proposals raise the same considerations.
- To consider this is a 'brownfield' site and, therefore, that it is suitable for this kind of industrial operation is simply ignoring the site's actual history and Planning conditions. After the quarrying and stone extraction on this site ended, there were conditions to return the area to agriculture. The field to the west of the adjacent existing stone cutting yard was farmed and then

became a series of spoil heaps before planning permission was sought and granted for agricultural buildings. There was then an application to vary this to light industry, which was granted. Now we are faced with this application which is most certainly not light industry.

- There would be a significant increase in traffic and intensity with regard to the use of the access road at its junction with the A422 and in view of the lack of adequate sightlines would be to the detriment of highway safety.
- The site is not on a designated HGV route and has poor links to the M40 motorway; with HGV vehicles having to travel through residential areas of surrounding villages and Banbury to reach the M40.
- No details of supply tankers included within the application.
- The site is not served by public transport and there are no footpath links. The proposed scheme does not demonstrate that the location of the development would minimise demand for travel, offer genuinely sustainable travel choices, improve road safety and support the objectives of both local and national policy.
- The A422 is already a hazardous route with history of accidents, and the risk of accident would be increased as a result of additional HGV movements to and from the site.
- Increased HGV traffic would only exacerbate heavy volumes currently experienced within villages along the A422; having significant implications for Wroxton, Drayton and Sun Rising Hill; in terms of pedestrian safety, vehicle movements and potential for damage to be caused to properties through vibrations from passing HGVs.
- Increased traffic would severely impact on the resident's quality of life in the villages along the route used by the HGVs.
- Route up Edgehill and Sun Rising Hill not appropriate for large HGV tanker movements.
- Existing permissions at the site limits HGV movements to just 10 lorries per day entering the shared access.
- Existing speed limits within the villages not observed.
- The condition of the road is poor now with signs of subsidence this extra load of large vehicles daily would exacerbate this.
- Increased lorry activity would have a detrimental effect on ramblers quiet enjoyment of that picturesque D'Arcy Dalton Way public right of way through the countryside.
- Noise pollution arising from 24 hour operation of the site.
- Air pollution; through increased vehicle emissions and smell of fuel emanating from the site.
- Potential dangers and negative impacts regarding storage of flammable fuels; including: risk of fire/explosion; leakage and surface water run-off into environment and/or water potentially resulting in ground pollution and pollution of natural springs and general water quality.
- Increased flood risk through surface water flooding.
- Negative impacts on the Cotswold AONB and surrounding valued countryside, through noise and light pollution affecting the dark skies currently experienced.

- Potential negative impact on ecology and biodiversity; including impacts on the Ornithological Society wildlife reserve created at the former Balscote Quarry site.
- Detrimental impact on the established businesses within the vicinity of the site; including the farming of adjacent land, farm shop and B&B; and, in turn, tourism in the local area, including visitors to Upton House and gardens.
- Proposed use as a petroleum fuel depot for 20 years, seems to be completely at odds with the UK government's strategic goal to achieve net zero emissions by 2050, and also CDCs ambitions to be carbon neutral by 2030.
- Proposals would set a precedent for potential further expansion of the site and similar developments within the rural countryside.
- Property devaluation [not a material consideration]
- Application has a number of inaccuracies; including: the site should properly include the means of access to the public highway i.e. all land to the A422 junction access; if the site includes the access road then the certificate of ownership is incorrect; as notice would need to be served on others with access rights (i.e. Hornton Grounds). Minor drafting errors on submitted drawings also noted.

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.

WARD MEMBER

7.2. Cllr Reynolds: *'I am becoming concerned about the build-up of traffic on the A422 from the numerous commercial activities along the A422. Clearly the road is capable of taking the traffic but there is the effect on the villages of Wroxton and Drayton.*

The possibility of fuel spill is my real concern as previous spillage some years ago polluted several water courses and even came up in the village of Balscote some distance away. So, if the development is approved there must be a fool proof system of containing it and not letting it get into the water system which has been changed by the digging out of the ironstone'.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.3. BANBURY TOWN COUNCIL: **Supports.** Comments: "It is recognised that CDC as planning authority will determine this application after a careful assessment of this proposal against national and local planning policy, an assessment of the proposal's impact upon traffic safety, and impact upon landscape character and appearance, and upon residential amenity, and taking into account any special circumstances that may be appropriate.

7.4. Banbury Town Council consider that a significant special circumstance that needs to be considered as part of the balancing exercise is the strong need to find an acceptable alternative site for this business that is currently located in the Canalside development area allocated in the Cherwell Local Plan (Policy BAN 1). Whilst that is a policy proposing a mixed use development, the fuel depot is a non-conforming development that due to its size, nature and traffic generation is incompatible with new residential development and needs to be relocated. Failure to find an alternative site will either force the closure of the business or the frustration of the

Council's intended redevelopment policy (which is a fundamental part of the supply of land for housing). It is noted that CDC's Economic Development Officer stresses both the importance of maintaining the future fuel supply to rural areas and the difficulty of finding acceptable alternative sites. Banbury TC share this view and therefore urge the approval of this proposal".

7.5. DRAYTON PARISH COUNCIL: **Objects.** Proposals will have a significant impact on the village, in particular the residents on the main Stratford Road and for this reason object to this application on the grounds of increased heavy vehicle traffic.

7.6. Raise a number of further points for consideration:

- The Transport Statement deficient in that it does not assess potential supply tanker movements.
- Proposed vehicle movements would go through the Conservation Areas of Wroxton and Drayton, both attractive villages that have very sharp bends and properties adjacent to the road. Proposals would result in additional pollution both in noise and air quality; and further the increased numbers of heavy vehicles will cause serious damage to the old properties adjacent to the road; both Drayton and Wroxton are having many historic properties with little or no foundations leaving them susceptible to vibrations caused by heavy vehicles. Similar comments can be made for Ettington and Pillerton Priors in Warwickshire.
- The consequences of an accident and spillage within the village areas are catastrophic. No reference within the application with regards to proposed measures to be put in place if there is an oil spillage from the tanks or a tanker at the site; and potential for oil escaping into the ground contaminating the ground water.
- In appropriate location for the proposals with unsuitable access to motorway network.
- Drayton should be formally consulted on the proposals.

7.7. HORLEY PARISH COUNCIL: No comments to make

7.8. HORNTON PARISH COUNCIL: **Objects.** Raises concerns in respect of:

- The principle of development is contrary to the policies of the Development Plan and would be an alien intrusion, completely out of character with the surrounding countryside and set an alarming precedent.
- Highways and transport impacts.
 - The site has no easy access to the Oxfordshire Lorry Route Network and that existing permissions on the site are restricted in their number of HGV movements.
 - This road has records of accidents. Slow moving fuel tankers operating night and day would potentially exacerbate the risk of accidents
 - The site is not served by public transport and would not be safe for walking and cycling to the site.
 - Public Safety and the risk to users of the D'Arcy Dalton Way.
- Detrimental impacts on the amenity of nearby residential properties and B&B business.
- Environmental impacts. A nearby site has previously been considered unacceptable for a new waste site; overlying a principal aquifer and not being located on Oxfordshire Lorry Route (A361) and lies over 5km from Banbury; and the same issues would apply to current proposals.

7.9. RATLEY & UPTON PARISH COUNCIL: Makes the following comments on the potential for light pollution and an appropriate lighting strategy to be in place. Further comments that the projected additional vehicle movements would not be significant, for their parish given the relatively small numbers cited and the nature of the road.

7.10. WROXTON & BALSCOTE PARISH COUNCIL: **Objects.** Raises concerns in respect of:

- Vehicle movements being routed through Wroxton; with the village already subject to alarming levels of heavy vehicle traffic, particularly during the early morning from about 5 a.m. onwards. The proposed vehicle movements throughout 24 hours will add to this.
- Existing traffic not adhering to the speed limit through the village.
- Concerns in relation to safety, noise and air pollution as well as on the environment and wildlife generally.
- Further safety concerns about quantities of inflammable material being transported through the village.
- Notes the safety record of the existing road and serious accidents on the A422

The PC urges CDC to consider with particular care the environmental risks of leakage and/or fire and ground contamination at a site in a rural location distant from the nearest fire station.

The PC further does not accept that the application is likely to add to the local economy and is for a non-sustainable commodity.

OTHER CONSULTEE RESPONSES

7.11. ARCHAEOLOGY: **No objections.**

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

7.13. CAMPAIGN TO PROTECT RURAL ENGLAND (CPRE): **Objects.** Commenting: The proposals are unsuitable for a rural and very scenic area with access only to a busy and dangerous road snaking through the villages of Wroxton and Drayton before entering western Banbury.

The proposals only benefit the promoters/applicants and would be to the detriment of the roads, the wildlife, the polluted environment - and above all the hundreds of people living along the route who would be subjected to almost incessant noise, disruptive light and the eternal hazards that a fuel depot always carries. Some people, such as the owners of a neighbouring B&B, would lose their livelihoods. The depot should clearly remain where it is or else be re-sited somewhere near the M40.

Further comments that the proposals would contradict the good intentions of CDC as recently stated in its review of the Local Plan up to 2040; in looking to protect 'valued landscapes' and 'areas of tranquillity' as well as the need to identify areas 'where development would be inappropriate'. The suggestion that the Council 'might protect those areas which are relatively undisturbed by noise and are valued for their recreational and amenity value' was welcomed by CPRE. Of only two such places specified by the review, one is the Ironstone Downs, in which the Hornton Quarry sits at the centre. *"It would thus make a mockery of the Council's plans if this noisy, destructive and wholly unnecessary application were to be approved"*.

7.14. COTSWOLDS CONSERVATION BOARD (CCB): **Objects.** The CCB considers that the applicant's submitted Landscape and Visual Impact Assessment (LVIA), does not adequately assess the potential impacts on the Cotswolds National Landscape (formerly Cotswolds Areas of Outstanding Natural Beauty); and considers that potential visual effects for receptors within the National Landscape (and on its boundary) should be more thoroughly assessed. This should include an assessment

of night-time visual effects, as outlined below in relation to the dark skies of the National Landscape.

The relative tranquillity of the Cotswolds National Landscape is one of the area's 'special qualities'. A key consideration, in this regard, is the potential increase in traffic movements on roads in the National Landscape and along its boundary, including, in this instance, the A422 to the north of the proposed development. The Board's Tranquillity Statement (Section 4.5) indicates that, as a rule of thumb, an increase in traffic movements and/or HGV movements of 10% or more should be considered to be significant.

Whilst the applicant has indicated the number of traffic movements to and from Hornton Grounds Quarry, they have not addressed the associated % increase in traffic/HGV movements on the A422. As such, it is not clear if the development would be compatible with the Board's Tranquillity Position Statement or with Policy CE4 (Tranquillity) of the Cotswolds AONB Management Plan.

Another 'special quality' of the Cotswolds National Landscape is its extensive dark sky areas. These dark sky areas can be adversely affected by new and/or increased levels of light pollution, including where the source of this light pollution is in the setting of the National Landscape. Appendix A of the Board's Dark Skies & Artificial Light Position Statement shows that the area of the proposed development has (or, at least, should have) relatively low levels of light pollution.

The Board is concerned that the lighting associated with the proposed development could potentially increase levels of light pollution in the locality and adversely affect the dark skies of the National Landscape. For example, the proposed lighting could potentially be more visible from locations within the National Landscape than the existing on-site lighting and/or outside of the operating hours of the current on-site lighting. This would not be compatible with the Board's Dark Skies and Artificial Light Position Statement or with Policy CE5 (Dark Skies) of the Cotswolds AONB Management Plan.

- 7.15. **ECOLOGY: No objections subject to conditions.** Comments: There are few ecological issues due to the current level of disturbance and historical use of the land. The proposal is to retain the areas of greatest value (hedgerows and waterbody to the North and South boundaries) and recommendations are made to ensure they are protected during construction. Proposals include some enhancements for biodiversity on site by including small areas of scrub and a hibernaculum. These should benefit wildlife long term if managed appropriately although continuing the hedgerows so they connect with others would also be valuable.

Conditions required to secure compliance with Section 5 of the Preliminary Ecological Appraisal; Compliance with Section 4 of the Lighting Impact Assessment and that a biodiversity enhancement scheme is submitted for approval.

- 7.16. **ECONOMIC DEVELOPMENT: Comments:** This proposal to relocate an established business and service provider would enable the existing jobs and important supply of oil for heating and transportation to be provided from a local hub away from a centre of population. Therefore, to achieve the Council's aims of job creation/safeguarding and enabling business/community services, the proposed development would be beneficial - but only if appropriate environmental and operational safeguards are established and adhered to.

Whilst initially commenting that the availability of alternative sites has been investigated, subsequently advises that it would be helpful to see a detailed, independent and transparent sequential site assessment of all potential alternative sites. This would include: previously developed industrial sites/estates; sites beyond the boundary of Cherwell; sites included in Cherwell's Local Plan; and any other site that is not in the Local Plan but could potentially provide a more appropriate

solution. Further that the relationship of the sites to a 'heat map' of journeys might usefully be overlaid to help the consideration and minimisation of traffic impact.

- 7.17. ENVIRONMENTAL PROTECTION: **No objections subject to conditions.** Having assessed the submitted Noise Impact Assessment and Air Quality Report has no further comment to make on these matters. Conditions required in respect of the proposals being carried out in accordance with the submitted lighting impact assessment and Electrical Vehicle charging infrastructure to be put in place.
- 7.18. ENVIRONMENT AGENCY (EA): **No objection.** The EA makes no comment in relation to contaminated land and flood risk; deferring to the Lead Local Flood Authority on matters surface water flooding. Notes that the submitted Geo Environmental Site Investigation confirms there are no specific historic contamination issues with the site.

The EA notes that the storage of fuel is proposed to be above ground within double skinned tanks with containment, therefore the risk of pollution to the environment is low, providing the development proceeds in accordance with the submitted plans. Provides advice to applicant in respect of the foul drainage method proposed detailed within the application requiring an environmental permit under the Environmental Permitting (England & Wales) Regulations 2016, from the Environment Agency, unless an exemption applies; and advises the applicant to contact them direct in relation to this matter.

- 7.19. LANDSCAPE SERVICES: **Objects.** The Landscape Officer (LO) advises that there is a lack of appropriate information within the application to allow for a detailed assessment of the potential impacts of the proposals, both on the landscape and also the nearby D'Arcy Dalton Public Right of Way.

The landscape sensitivity and capacity are not sufficiently addressed in the body of the LVIA. The application requires a comprehensive and proportionate LVIA implemented by a Chartered Landscape Architect in a practice registered with the Landscape Institute. Important operational impacts and effects remain to be addressed and should be done so in the forthcoming LVIA.

The LO advises that it is not just the impact of the proposed built form of the distribution centre that needs to be properly assessed, but also the impacts of significant vehicle movements to and from the site; with particular concern in respect of the use of distribution lorries and their harm to this landscape. The LO states that the Johnson's quarry stone operation adjacent to the application site, combined with the fuel distribution when both sites are at rest would not present cumulative visual harm within the quarry itself, because (if established) the existing earth bunding with hedgerow will screen. However, once both sites are fully operational the arrival of lorries and other traffic originally associated with Johnsons will increase to a level may provide cumulative visual harm for receptors using approx. 170 m of d'Darcy Dalton Way. The means potentially that the operational magnitude of change is High in this particular area which results in a Substantial significance of effect (not to mention the impact of noise and fumes on d'Arcy Dalton Receptors).

The quarry and its slopes is a sub-character area surrounded by landscape areas with potentially uncharacteristic and harmful development that would require the appropriate level of landscape mitigation the characterises and reinforces the surrounding landscape structure.

Further, appropriate level of landscape mitigation would be required that the characterises and reinforces the surrounding landscape structure. If this application was approved it should be on the basis of increasing the extent of the application boundary to include the perimeters of the earth bunds and associated structural vegetation to ensure planning control of these essential features where a landscape and landscape management conditions would apply.

7.20. LOCAL HIGHWAY AUTHORITY (LHA): **Objects.** Considers the key issues to be that:

- The generated HGV traffic would adversely affect the village of Wroxton, which is contrary to Policy TR10 of the Cherwell Local Plan
- It has not been demonstrated that the site access junction with the A422 is satisfactory, considering the proposed intensification of use.

Following its initial response the LHA provided further comment highlighting an issue with the site's application boundary. The Location Plan drawing no. 6289-803 Rev. C indicates a red line area around the site, but does not include the access route to the public highway. This was pointed out in the Single Response but mistakenly not raised as a reason for objection. The access road is shown in filled red; however, this also does not connect to the public highway at the southern extent. It has not been demonstrated that a right of access is available along the access road, or indeed between the public highway and the access road (which is shared with Hornton Grounds Farm).

7.21. LEAD LOCAL FLOOD AUTHORITY (LLFA): **Objects.** Considers the key issues to be that:

- Concerns regarding the constant use of loading surface by HGVs. Regular turning manoeuvres could affect the strength of cellular tank proposed.
- Proposal is not in line with Local and National Standards
- There's no demonstration of water quality being managed appropriately in accordance with SuDS CIRIA Manual.
- Suitability of the access road for the proposed development.

7.22. STRATFORD-ON-AVON DISTRICT COUNCIL: **No objections.**

7.23. THAMES VALLEY POLICE DESIGN ADVISOR: No comments received.

7.24. THAMES WATER: No comments received.

7.25. WARWICKSHIRE COUNTY COUNCIL: **No objections subject to conditions.** Condition required in respect of establishing HGV movements through an HGV Routeing Strategy; required as insufficient information has been provided with the application with regard to movements by large tankers that are likely to be used for bulk delivery of fuel to the application site for distribution. Further advises that Warwickshire Highway Authority considers that the most appropriate route would be south-east of the application site along the A422 between the site and the M40.

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)

- Villages 1: Village Categorisation
- PSD1: Presumption in Favour of Sustainable Development
- SLE1: Employment Development

- SLE4: Improved Transport and Connections
- ESD1: Mitigating and Adapting to Climate Change
- ESD3: Sustainable Construction
- ESD5: Renewable Energy
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- ESD8: Water Resources
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the built and historic environment
- Banbury 1: Banbury Canalside

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- TR7: Development attracting traffic on minor roads
- TR10: Heavy Goods Vehicles
- C28: Layout, design and external appearance of new development
- C31: Compatibility of proposals in residential areas
- ENV1: Development likely to cause detrimental levels of pollution
- ENV12: Development on contaminated land

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Oxfordshire Wildlife & Landscape Study (OWLS) 2004
- Cherwell Countryside Design Summary (1998)
- Cotswolds Area of Outstanding Natural Beauty Management Plan 2018-2023 (CAONBMP 2023)
- 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; including landscape impact
- Heritage Impact
- Highway safety
- Residential amenity
- Ecology and Biodiversity
- Drainage and Flood-risk

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.
- 9.3. Court judgements have concluded that there is no presumption in favour of sustainable development within the NPPF where a proposal conflicts with an up-to-date development plan given that the plan itself will have been prepared against national planning policy and guidance and so must in itself be a sustainable strategy for the area. As a result, significant and specific overall benefits would need to be demonstrated to justify departing from a development plan that is up-to-date with respect to national policy rather than a generic balancing exercise as part of a presumption in favour of sustainable development.

Policy Context

- 9.4. The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having three dimensions: economic, social and environmental; and seeks to secure support for the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings and encourages Local Planning Authorities to proactively meet the development needs of business.
- 9.5. Policy PSD1 contained within the CLP 2015 echoes the NPPF's requirements for 'sustainable development' and that planning applications that accord with the policies in the Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise.
- 9.6. The CLP 2015 supports sustainable new development and 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.
- 9.7. Policy ESD1 advises that measures will be taken to mitigate the impact of development within the District on climate change. This includes distributing growth to the most sustainable locations and delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars; and further, designing developments to reduce carbon emissions and use resources more efficiently; to ensure that development is more resilient to climate change impacts.
- 9.8. The proposals would provide new employment generating development in a rural location. The proposal is sui generis but comprises B class uses. Policy SLE1 of the CLP 2015 relates to B class uses. In this respect Policy SLE1 of the CLP 2015 is considered relevant. Policy SLE1 seeks to protect existing employment sites whilst supporting sustainable economic growth. It states that: *'Employment development will be focused on existing employment sites. On existing operational or vacant employment sites at Banbury, Bicester, Kidlington and in the rural areas employment development, including intensification, will be permitted subject to compliance with other policies in the Plan and other material considerations'*. The application submission sets out the proposal for the relocation of an existing

business from within Banbury, but for this to be relevant the relocation would need to be secured as part of the planning permission, which would be difficult to achieve.

Assessment

- 9.9. Hornton Grounds Quarry is part of a larger permission for ironstone extraction that also includes quarries at Wroxton, Alkerton and Balscote. Extraction has ceased at Hornton Grounds Quarry and the area has been mostly restored back to agriculture except for the stone processing area, and the current site and land to the east. The use of the wider site has evolved over time. The wider site began with the quarrying of the stone, before altering the business activities at the site to involve the import of stone via heavy goods vehicles; processes currently undertaken at the stone cutting yard adjacent the site, which functions as rural premises for the working and manufacturing of stone materials into end products providing the building materials for the homes and buildings throughout the district and beyond. It has previously been considered that the nature of the business activities at the site means a rural location is appropriate.
- 9.10. The site is land that has previously been use for commercial purposes associated with quarrying operations, and as noted above the application site has extant planning permissions for industrial development within Class B2. Neither permission MW.0090.14 nor MW.0076/16 restricts the form of Class B2 activity which can be carried on from the site. Given the extant permissions would be employment generating development Officers therefore conclude that the site could be considered an existing employment site in the context of CLP Policy SLE1.
- 9.11. Policy SLE1 seeks to enhance the employment opportunities within the district in the most sustainable locations. Rural employment opportunities are supported on existing operational or vacant employment sites where justification is provided to demonstrate that proposals are compatible with the character of the surrounding environment; and further, subject to compliance with other policies in the Development Plan and other material considerations.
- 9.12. Para. 84 of the NPPF further advises of the need to recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
- 9.13. The site is not a geographically sustainable location being located some distance from the urban centre of Banbury and any Category A settlements, and the proposals would not be particularly sympathetic to the rural context, having a commercial appearance more suited to an industrialised area. Given the remote location employees of the site would likely be highly dependent on the use of private motor vehicles to access the site, with there being no suitable public transport. The proposals would lead to a significant increase in HGV movements on the surrounding road network. There are no bus services within walking distance of the site, and the site is served by a rural road which mostly provides access to farms, with no footway or provision for walking or cycling.
- 9.14. No justification has been put forward within the application for the proposed fuel storage depot in this remote rural location. Further, the application submission did not include an assessment of any alternative sites.
- 9.15. In terms of potential benefits, the proposals would see the relocation of an existing business, which due to its size, nature and traffic generation is incompatible with the proposed redevelopment of the Banbury Canalside area, and ideally needs to be

relocated. There would be a reduction in HGV movements associated with the business ceasing from within the Town Centre area

- 9.16. The proposals would also support the operational needs and expansion of the existing business and new investment in economic growth, allowing for the retention of existing jobs based at the Tramway Road site.
- 9.17. However, there is insufficient information provided to establish whether the new location would indeed reduce the overall impact, when considered against the existing site within Banbury; with no details of existing movements and further, no specific details of the frequency of supply delivery tankers. In this respect the site is not considered a sustainable location for this level of increased activity as a result of new development and it has not been demonstrated that the proposals would represent a more sustainable option than the existing site within the urban centre of Banbury
- 9.18. In addition, it should be noted that were permission to be granted there is nothing within the application that would compel the applicant to cease use of the existing site to relocate and we could potentially see two sites benefitting from an authorised use as a storage/distribution depot.
- 9.19. The existing business site is located within the centre of Banbury and officers acknowledge that access to and from the site brings with it impacts on the surrounding highway network, and by relocating the site away from the centre could potentially reduce the potential impacts of such vehicle movements. That said, HGVs would use Hennef Way, for example, to access the M40, whether sited at the Banbury Canalside site or the Hornton Grounds Quarry site.
- 9.20. Whilst there would undoubtedly be benefits with the relocation of the business away from the Canalside area, to the extent that such benefits can be material they need to be balanced against the potential adverse impacts of the proposed development, through the redevelopment of this rural countryside location. In this respect officers have significant concerns with regards to the significant intensification of the use of the site and the detrimental impacts that the proposals would have on not just the immediate environment of the site, including nearby residential properties and businesses, but also wider impacts on the surrounding villages, that would be on the route of the HGV vehicle movements to and from the site. These matters are discussed in more detail below.

Conclusion

- 9.21. Whilst there would be benefits through the relocation of the existing business to facilitate the Council's future aspirations for redevelopment of the Canalside Area in Banbury area, and in some respects would support the existing business and economic growth, officers consider that it has not been satisfactorily demonstrated that there exists sufficient justification as to why an intensification of the employment use should be allowed in this unsustainable location and that the proposals would not be to the significant detriment of environment. Further, it has not been demonstrated that any such need for the relocation of the existing business could not be met on existing or allocated employment sites; the proposals are therefore considered contrary to Policies SLE 1 and ESD 1 of the CLP 2015 and Government guidance within the NPPF.

Design and impact on the character of the area

Policy Context

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

- 9.23. These aims are also echoed within Policy ESD15 of the CLP 2015 which looks to promote and support development of a high standard which contributes positively to an area's character and identity by creating or reinforcing local distinctiveness, further stating that: *"Development of all scales should be designed to improve the quality and appearance of an area and the way it functions, deliver buildings, places and spaces that can adapt to changing social, technological, economic and environmental conditions and support the efficient use of land and infrastructure, through appropriate land uses, mix and density/development intensity"*.
- 9.24. Policy ESD12 of the CLP 2015 states that: *'High priority will be given to the protection and enhancement of the Cotswolds AONB and the Council will seek to protect the AONB and its setting from potentially damaging and inappropriate development. The Cotswolds AONB Management Plan will be used as supplementary guidance in decision making relevant to the AONB'*.
- 9.25. Policy CE5 of the Cotswolds Management Plan states that: 'Proposals that are likely to impact on the dark skies of the Cotswolds AONB should have regard to these dark skies, by seeking to (i) avoid and (ii) minimise light pollution'; these aims are reflected in Policy ESD15 of the CLP 2015.
- 9.26. Policy ESD13 of the CLP 2015 states that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not normally be permitted if they would cause undue visual intrusion into the open countryside, cause undue harm to important natural landscape features and topography, be inconsistent with local character, or impact on areas judged to have a high level of tranquillity.
- 9.27. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development.

Assessment

- 9.28. The site is located in open countryside where land levels are relatively constant. The site is bounded by bunding to northern and eastern boundaries with bunding and hedgerow to the southern boundary and existing stone cutting/processing site adjacent to the west. Views of the site are experienced from the surrounding land, adjacent farm track and PRow the cross land south/east of the site. The application is supported by a Landscape Visual Impact Assessment (LVIA) prepared by C.A.T. Landscape Consultancy.
- 9.29. The applicants contend that the proposals would have a lower impact upon the landscape than the approved development at the site (B2 use building with footprint of ~1220m² and overall ridge height of ~9.7m) and the 3no agricultural buildings approved on land adjacent to the east. The fuel storage depot would have a markedly different appearance (particularly the large storage tanks, 2.4m high security fencing and 5m high security lighting) than that of the adjacent stone cutting yard and the previously approved buildings on site and adjacent. The approved buildings on the site and the adjacent site, whilst of a greater scale, would have a character and appearance that would be more sympathetic to and consistent with utilitarian agricultural buildings that are often seen in such rural locations, as opposed to the fuel depot which would be a commercial urban feature alien to the rural countryside location.
- 9.30. The Council's Landscape Officer (CLO) has reviewed the submitted information and objects to the proposal, advising that there is a lack of appropriate details to allow for a detailed assessment of the potential impacts of the proposed development and further that the LVIA has not appropriately assessed the impacts of the proposals on the surrounding landscape. The LVIA does not assess the potential impacts of the

intensification of the use of the site and access track or the potential impacts of lighting on the night sky.

- 9.31. The CLO advises that because of the important landscape sensitivity and capacity criteria associated with this development, and the fact that landscape sensitivity and capacity are not sufficiently addressed in the body of the LVIA, the application requires a comprehensive and proportionate LVIA implemented by a Chartered Landscape Architect in a practice registered with the Landscape Institute.
- 9.32. The landscape around the site and envelope of sensitivity and capacity covers two distinctive landscape character areas within the District as defined by OWLS: Wooded Pastures, Valleys and Slopes, and Farmland Plateau.
- 9.33. The OWLS note that the Farmland Plateau is characterised by *'a high limestone plateau with a distinctive elevated and exposed character, broad skies and long distance views. Large scale arable fields dominate the landscape, with some medium-sized plantations partially obscuring the otherwise open views'*. The OWLS set out that the key characteristics comprise of:
- *Level or gently rolling open ridges dissected by narrow valleys and broader vales.*
 - *Large, regular arable fields enclosed by low thorn hedges and limestone walls.*
 - *Rectilinear plantations and shelterbelts.*
 - *Sparsely settled landscape with a few nucleated settlements.*
 - *Long, straight roads running along the ridge summits.*
- 9.34. Whilst the Wooded Pastures, Valleys and Slopes is characterised by pastoral and wooded landscapes associated with the steep slopes and valleys of small streams and main rivers. The OWLS set out that the key characteristics comprise of:
- *Steep sided valleys and slopes.*
 - *Large, interlocking blocks of ancient and plantation woodland.*
 - *Small pasture fields with localised unimproved grassland.*
 - *Tall, thick hedges and densely scattered hedgerow trees.*
 - *Small, intact villages and hamlets.*
- 9.35. The Council's Countryside Design Summary (1998) encourages sensitive and appropriate development across the District and sets out specific advice relevant to this case. This divides the Cherwell District into four broad areas and this site is identified as lying within the Ironstone Downs area. The landscape of the area is described as *'strongly undulating landscape, which rises to the west forming an upland ridge on the western boundary of the district'*. The Design Summary also sets out that: *'Mixed farmland is characteristic of this area. Where the land is gently sloping, large-scale intensive arable farmland predominates. Elsewhere on steeper slopes, small scale grazing land exists with strong patterns of mixed thorn hedgerows containing hedgerow trees such as Oak, Ash, Sycamore and occasional Beech'*; and further there are very few extensive areas of woodland.
- 9.36. The Countryside Design Summary sets out that *'all forms of development need to be sited with care in order to avoid locations where development would be either, prominent, visually intrusive, out of character or would harm a feature or site, which is important to the character of the area'*.
- 9.37. The Wooded Pastures Valleys and Slopes define a noticeable change to an intimate more contained landscape as one walks westwards from the expansive Farmland Plateau. The site itself resides in the Farmland Plateau character area.
- 9.38. The quarry and its slopes are a sub-character area surrounded by the aforementioned landscape areas with potentially uncharacteristic and harmful

development that would require the appropriate level of landscape mitigation the characterises and reinforces the surrounding landscape structure.

- 9.39. The CLO notes that the existing site is hidden successfully by intervening topography most notably with the Wooded Pastures, Valleys and Slopes intervening established hedgerow along the north of D'Arcy Dalton Way. Even an ~38m gap in the hedgerow does not allow visual experience of the site due to intervening field boundary hedgerows.
- 9.40. The existing landscaping features once established could potentially provide screening of the site of the actual fuel depot. There is a recently planted hedgerow on top of the bunding that will establish and mature and provide reinforcement screening with the appropriate landscape management plan; however, the CLO notes that this area falls outside of the application's site boundary and is concerned that appropriate control cannot be achieved without the application site being expanded to encompass these areas.
- 9.41. However, particular concern rests with the use of distribution lorries their harm to this landscape, including receptors that use the important D'Arcy Dalton Way PRoW, especially around the highway access. The sensitivity of D'Arcy Dalton Way is generally high because of its public perception as an important route which is very well used.
- 9.42. The CLO advises that by the intensification of the use of the site there would be cumulative visual harm arising from the operations of the existing stone cutting/processing yard operation, adjacent to the application site, combined with the fuel distribution operations, with the arrival of lorries and other traffic rising to a level that harm for receptors using approx. 170m of D'Arcy Dalton Way. This would mean that the operational magnitude of change is high in this particular area, which results in a substantial significance of effect (not to mention the impact of noise and fumes on D'Arcy Dalton Receptors).
- 9.43. The site sits some 250m from the boundary of the Cotswolds Area of Outstanding Natural Beauty. The site is in area considered by the Cotswolds Area of Outstanding Natural Beauty Management Plan 2018-2023 (CAONBMP 2023) to be of relatively dark skies. Policy CE5 (Dark Skies) advises that proposals that are likely to impact on the dark skies of the Cotswolds AONB should have regard to these dark skies, by seeking to (i) avoid and (ii) minimise light pollution. Policy ESD 15 echoes the requirement for consideration of light pollution stating that *'New development proposals should: Limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation'*. Objections are raised by both the Cotswolds Conservation Board and CPRE in respect of potential of adverse landscape impact including light pollution of the night-time sky.
- 9.44. In terms of assessment of lighting impact the application is supported by a Lighting Impact Assessment (LIA) prepared by RSK Environment Ltd (RSK). This report states that: *'The scheme will not cause significant light spillage beyond the developed area at Hornton Grounds'* and further concludes that: *'In summary it has been shown that the proposed development will have an insignificant effect on the immediate environment with respect to lighting pollution. Although light spill has increased illuminance levels at some locations, the potential increase in illuminance is considered negligible'*.
- 9.45. In respect of horizontal light spill the report demonstrates that there would not be significant light spill outside of the site beyond existing landscaping features. However, there are concerns with regards to potential vertical light spill creating Sky Glow at the site. The LIA states that: *'When considering direct Sky Glow, as a result of direct upwards light, there is the possibility of a site wide effect being visible from darker environments, however, direct Sky Glow cannot be measured. The baseline is assessed relative to visual baseline survey conditions and published Campaign to*

Protect Rural England (CPRE) – Night Blight data. Taken on a local scale, existing saturated Sky Glow was not noticeable at the time of the site visit’.

- 9.46. As noted above the submitted LVIA does not assess the visual impacts of the proposed development on the night-time sky and is considered deficient in this respect. It is noted that there is existing security lighting at the stone cutting/processing site however, it is unclear whether this is in operation throughout the night. The proposals are for 24/7 operation and as such there would be a cumulative increase in lighting at this location within an area of relatively dark skies.
- 9.47. Given the surrounding topography in a rural location the proposed lights have the potential for significant visual impacts and being visually apparent from distance and detrimental to the night-time sky. In this respect, in light of the lack of evidence to the contrary, officers consider that the proposals would result in detrimental impacts on the night-time sky and landscape at this location, further compounding the potential adverse visual impacts discussed above.

Conclusion

- 9.48. Policies ESD13 and ESD15 of the CLP 2015 seeks to safeguard, maintain and enhance the district’s valued rural landscape. Overall officers consider that the LVIA does not appropriately assess or accurately reflect the likely potential visual impacts of the proposed development, and that the proposed intensification of the use the site coupled with urbanising effect of the proposed development would have a significant and demonstrable detrimental impact on the character and appearance on the character area and surrounding valued rural landscape; further the use of the site for such development has not been justified within the application. The proposed development would therefore be contrary to the identified Development Plan policies causing unjustified visual harm through intrusion into the open countryside and valued rural landscape and is unacceptable in this regard.

Heritage Impact

Legislative and policy context

- 9.49. The site is within 330m of Hornton Grounds Farmhouse a Grade II listed building and has the potential to affect the setting of this Listed Building
- 9.50. Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.51. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 193 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2015 echoes this guidance.

Assessment

- 9.52. Hornton Grounds Farmhouse is a grade II listed building, which lies some 330m south-east of the site of the depot and some 270m from the route of the access road serving the existing operations at the stone cutting/processing yard.
- 9.53. As noted above, the site of the fuel depot would largely be screened by existing landscape features; and in respect of the site’s and access road’s relationship with Hornton Grounds Farmhouse there are further trees bounding the farmhouse site on intervening land providing natural screening.

9.54. Whilst officers have significant concerns with regards to potential impacts on the surrounding landscape, given the significant distance between Hornton Grounds Farmhouse and the development proposals and existing natural screening that exists it is considered that the proposals would not result in demonstrable harm to the significance of the listed building above those currently experienced.

Conclusion

9.55. It is considered that the proposed development would not result in demonstrable harm to the significance of heritage assets, in line with Policy ESD15 of the CLP 2015 and Government guidance within the NPPF.

Highway safety

Policy Context

9.56. 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.

9.57. 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.

9.58. Both Policies ESD15 and SLE 4 of the CLP 2015 reflect the provision and aims of the NPPF. Policy ESD15 of the CLP 2015 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”*.

9.59. Saved Policy TR7 of the CLP 1996 states that: *‘Development that would regularly attract large commercial vehicles or large numbers of cars onto unsuitable minor roads will not normally be permitted’*.

9.60. Saved Policy TR10 states that: *‘Development that would generate frequent heavy-goods vehicle movements through residential areas or on unsuitable urban or rural roads will not be permitted. The council will resist proposals for the establishment of heavy-goods-vehicle operating centres where they would create traffic problems or adversely affect the amenity of residential areas or villages’*.

Assessment

9.61. Whilst not within the application’s site boundary the applicant indicates that the proposals would utilise the existing access road that currently serves the existing stone processing yard and would provide parking and manoeuvring within the proposed depot site itself. The fact that the application’s site boundary does not include the access and land necessary to demonstrate appropriate vision splays at the access point is considered to be a fundamental issue that means that limited control can be exercised over such matters.

- 9.62. The application is supported by a Transport Statement (TS) prepared by Wormald Burrows Partnership Limited and Travel Plan (TP). The site would be 24 hr operation and allowing for supply delivery tanker movements would operate 7 days a week. In terms of trip generation, the submitted TS sets out that 17 staff (fourteen tanker drivers and three office staff) will be employed at the site, Monday to Friday over a 24-hour period with seven drivers employed on a Saturday from 06:00 to 18:00. It is estimated that up to 158 fuel tanker trips will be generated per week; this equates to an average of only 29 trips per day based on a week of five and a half days. This includes the smaller depot tankers delivering fuel to locations within a 50-mile radius of Banbury from Monday to Saturday, as well as the larger articulated tanker trucks bringing fuel to the depot from Monday to Sunday.
- 9.63. Significant concerns are raised in third party comments and objections received from local parish councils on the route between the site and Banbury and at Hornton, in relation to potential increased numbers of large vehicle movements through the nearby villages.
- 9.64. Extant permissions at the site include restrictions on the number of HGV vehicle movements to and from the site (MW.0090/14 - 10 (5 in, 5 out) per day and MW.0076/16 - 4 (2 in, 2 out) per day) to control the number of HGVs through the village of Wroxton in accordance with the provisions aims of saved Policy TR10 of the CLP 1996 which looks to restrict HGV movements through residential areas and villages where such would create traffic problems or adversely affect the amenity of such areas. The proposals would result in a much more intensive use of the site with some 29 movements per day.
- 9.65. Whilst it is indicated that proposals have been progressed on the basis of a 360-degree route analysis, details of such were not included within the application submission and it is unclear as to the actual geographical catchment area for the business. Further the TS, whilst estimating potential HGV movements, does not appear to have assessed the cumulative impacts of such HGV movements resulting from combined vehicle movements of the proposed development and existing operations at the stone processing yard and nearby quarrying operations at Wroxton.
- 9.66. The LHA advises that whilst classed as a 'A' road the A422 is not on the Oxfordshire Lorry Route Map (Connecting Oxfordshire: LTP4 Freight Strategy) and is, therefore, below a local access route in the hierarchy of roads. The Freight Strategy aims to *"Plan the location of new employment sites and any related transport infrastructure so that these can function well, with efficient freight access to and from the strategic transport network without adverse impacts on local communities, road users and the environment."* And further the LHA advises that: *'the application has failed to demonstrate that the A422 is suitable to accommodate the number of HGV movements that the proposals would generate, and the location is not one that would satisfy the guidelines of LTP4'*.
- 9.67. The TS indicates that large fuel tankers would have no need to travel along the narrow rural roads serving the surrounding villages and would have a negligible impact on the local highway network and the villages surrounding them. HGV movement whilst on an 'A' road on a route towards Banbury (and access to the M40) takes through them the villages of Wroxton and Drayton and residential areas of Ruscote and Hardwick; and as such would impact on the residential area immediately adjacent the route of the vehicles. It is considered that a detailed Routing Agreement would need to be secured in this respect to ensure that the proposals would not have a detrimental impact on the minor roads and villages, through an inappropriate increase in larger vehicles on such routes; however such matters have not be pursued by officers given that the principle of development is not considered acceptable in this unsustainable location.

- 9.68. In addition to the above the LHA also raises objections in terms of highway safety; advising that there is insufficient information presented within the application to demonstrate that appropriate visibility is achieved at the access to the highway, to accommodate a more intensive use of the site. As noted above the access is not included within the site area and vision splays are not demonstrated for the appropriate speed of passing vehicles; and in light of such it is considered that the development will have an unacceptable impact on highway safety, which is contrary to the Policy ESD15 of the CLP 2015 and national guidance within the NPPF.

Conclusion

- 9.69. The Development Plan is the starting point for decision making for development proposals and the policies considered relevant to the assessment and consideration of transport impacts are set above. The NPPF (Para. 109) states that: *'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'*.
- 9.70. In this instance it is considered that the site would not be a geographically sustainable location and proposals would result in significant new vehicle movements to and from the site, both in terms of HGV and smaller vehicles and contrary of the aims of the achievement of promoting sustainable transport. The proposals would likely generate frequent HGV movements through residential areas on the outskirts of Banbury and through the nearby villages of Drayton and Wroxton and would be to the detriment of the residential amenity of these areas. Further it has not been demonstrated that safe and suitable access can be achieved for a more intensive use of the site. The proposals are therefore contrary to saved Policy TR10 of the CLP 1996, Policies ESD15 and SLE4 of the CLP 2015 and Government guidance within the NPPF in respect of promoting safe and sustainable transport.

Residential amenity

Policy Context

- 9.71. Saved Policy C31 of the CLP 1996 states that: *'In existing and proposed residential areas any development which is not compatible with the residential character of the area, or would cause an unacceptable level of nuisance or visual intrusion will not normally be permitted'*; with the aim being that new development, including changes of use, does not prejudice the environment of the areas concerned. These provisions are echoed in Policy ESD15 of the CLP 2015, 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'*.
- 9.72. Saved Policy ENV1 of the CLP 1996 further states that: *'Development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke, fumes or other type of environmental pollution will not normally be permitted'*; with the Council seeking to ensure that the amenities of the environment, and in particular the amenities of residential properties, are not unduly affected by development proposals which may cause environmental pollution, including that caused by traffic generation.

Assessment

- 9.73. Hornton Grounds is the closest residential property, with a B&B that is also run from the site. This property is located some 330m south-east of the site of the proposed fuel depot, and ~280m from the access road at its nearest point. A further residential property The Dairy Cottage, is located to the south-west and approximately 500m from the quarry and 200m from the access road.
- 9.74. Given the distance of the site from residential properties, it is considered that the only potential impacts on residential amenity would be that generated by the noise

of the operation of the business on a 24hr basis. In this respect the application is supported by Noise Impact Assessment (NIA) prepared by LF Acoustics Ltd (dated June 2020), which has assessed the potential impacts on these residential properties. The NIA concludes that following an assessment of the calculated noise levels made against the requirements of BS 4142, the operation of the proposed depot, including potential night time deliveries, would have a low potential to give rise to adverse noise impact at surrounding properties and would not result in any significant adverse noise impacts.

- 9.75. The proposals are located some distance from the residential properties at Hornton Grounds, including B&B accommodation. The Council's Environmental Protection Team has assessed the proposals and supporting NIA and raises no objections in respect of the impacts of noise on the amenities of surrounding properties.
- 9.76. However, late night tanker movements to and from the site do have the potential to cause disruption to residential properties, given the proximity of the access road. Should the Council be minded to approve the application conditions would need to be applied to any such permission to regulate the hours in which the receipt of fuel and the fuelling of customer tankers occurs.
- 9.77. Overall, whilst there would clearly be some impact of 24hr operation of the site, it is considered that, given the relationship of the application site with the existing nearby residential properties and the context of the site, subject to appropriate control over the timing of vehicle movements to and from the site the proposed development would not adversely impact on residential amenity and is thus acceptable in this respect.

Conclusion

- 9.78. Given the above, officers are satisfied that the development could be made acceptable in residential amenity terms; in accordance with the provisions and aims of the Development Plan policies identified above.

Ecology Impact

Legislative context

- 9.79. 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.
- 9.80. 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.
- 9.81. 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.
- 9.82. 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.

9.83. 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

9.84. 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.

9.85. 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.

9.86. 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.

9.87. 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.

9.88. 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.

9.89. 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.

9.90. 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 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

9.91. 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')

9.92. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains whilst the site generally appears to be of low ecological value, the site does have some potential for ecological value, particularly in the boundary hedgerows and waterbodies to the north and south boundaries, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles and great crested newts.

9.93. 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 local planning authority 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.

9.94. 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.

9.95. The application is supported by a Preliminary Ecological Appraisal (including surveys carried out on the 26th and 28th May 2020) and Lighting Impact Assessment and Addendum prepared by Griffin Ecology.

9.96. The Council's Ecologist (CE) considers the submitted ecological information and its conclusions and recommendations are largely acceptable with regards to protected species, which are not a particular constraint on site due to the current level of disturbance and historical use of the land. She notes recommendations with the reports to retain the areas of greatest value (hedgerows and waterbody to the north and south boundaries) to ensure they are protected during construction. Further that the proposals look to create some enhancements for biodiversity on site by including small areas of scrub and a hibernaculum. These should benefit wildlife long term if managed appropriately although continuing the hedgerows so they connect with others would also be valuable and should be considered.

9.97. The CE recommends that Section 5 of the Preliminary Ecological Appraisal is conditioned and that a biodiversity enhancement scheme is submitted which should

include both the proposals shown, timing of provision, any additional enhancements on site or adjacent and a longer term management scheme for the planting and pond.

Conclusion

- 9.98. Officers are satisfied, on the basis of the CE's advice and subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged. Further that the proposals could demonstrate a nett gain in biodiversity at the site in accordance with the provisions and aims of Policy ESD10 of the CLP 2015 and Government guidance within the NPPF in respect of Conserving and enhancing the natural environment.

Flood-risk and drainage

Policy Context

- 9.99. 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.
- 9.100. 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.
- 9.101. Policy ESD8 Policy ESD8 requires that: *'Water quality will be maintained and enhanced by avoiding adverse effects of development on the water environment. Development proposals which would adversely affect the water quality of surface or underground water bodies, including rivers, canals, lakes and reservoirs, as a result of directly attributable factors, will not be permitted'*.

Assessment

- 9.102. In terms of flood-risk and drainage the application is supported by a Flood-Risk Assessment (FRA) prepared by Wormald Burrows Partnership Limited. The Environment Agency's flood maps indicate that site is not within a higher risk flood zone and is within Flood Zone 1 where less vulnerable can be considered acceptable in principle subject to no increased flood risk elsewhere as a result of proposal.
- 9.103. Third party concerns are raised in respect of the proposals potentially impacting on local water quality, as a result of spillages and surface water discharging into nearby water courses. Further photographic evidence has been provided by third parties showing some flooding of surrounding fields and existing drainage channels.
- 9.104. The site would become an impermeable area, with the development of hardstanding for the proposed facility and associated parking and manoeuvring areas for cars and HGVs. Soakaways have been discounted due to ground conditions presence of shallow groundwater; a drainage scheme has therefore been developed which includes attenuation with a restricted discharge to the existing ditch adjacent to the access road.
- 9.105. The Environment Agency (EA) has assessed the application and supporting information and advises that they no comments to make on this proposal in relation to contaminated land and flood risk. The submitted Geo Environmental Site Investigation confirms there are no specific historic contamination issues with the site. But further, the EA advises that the County Council as Lead Local Flood

Authority (LLFA) should be consulted in respect of surface water flooding being a matter for them to advise on.

9.106. The LLFA has assessed the application and supporting information and objects on the grounds of the lack of appropriate information in respect of whether an acceptable drainage strategy could be achieved at the site that would be compatible with the significant HGV movements at the site, ensuring that water quality would be maintained and that the proposals would accord with both Local and National Standards.

9.107. Specific concerns are raised by the LLFA in respect of:

- The proposed development requiring a water quality assessment in accordance with Section 4 and Section 26 of SuDS Manual.
- The Proposed development must meet local standards, L19, *“At least one surface feature should be deployed within the drainage system for water quality purposes, or more features for runoff which may contain higher levels of pollutants in accordance with the CIRIA SuDS Manual C753. Only if surface features are demonstrated as not viable, then approved proprietary engineered pollution control features such as vortex separators, serviceable/ replaceable filter screens, or pollution interceptors may be used”*
- The continued suitability of the access road with the increased vehicle movements from the development and the effect on the local drainage systems, specifically the ordinary watercourse near to the access on the public highway. This should be included in the FRA and the required Water Quality Assessment.

9.108. Given the LLFA’s concerns, officers consider that it has not been satisfactorily demonstrated that the proposed site can be appropriately drained without it having a potential detrimental impact the water environment.

9.109. In respect of potential for spillages, the proposed drainage strategy would include interceptors that would manage spillages within the site; the EA raises no concerns in this respect storage of fuel is proposed to be above ground within double skinned tanks with containment, therefore the risk of pollution to the environment is low, providing the development proceeds in accordance with the submitted plans. Appropriate control in this respect could be achieved through conditions attached to any such permission, should the Council be minded to approve the application.

Conclusion

9.110. Officers consider that, in light of the technical objection raised by the LLFA, the applicant has failed to demonstrate that appropriate surface water drainage scheme for the site, based on sustainable drainage principles, can be achieved to ensure appropriate drainage of the site and that water quality would be maintained; the proposals are therefore not considered to be in accordance with the Development Plan policies identified above and are not acceptable in terms of flood-risk and drainage.

Other Matters

9.111. Third party comments raise concerns with regards to the storage and transportation of flammable substances and risk from such. The EA and Council’s Environmental Protection Team have raised no concerns in this respect and Officers are not aware of any significant issues arising from the operation of the existing facility within Banbury. The business operations would be subjected to statutory regulations to ensure safe storage of fuel, that would sit outside of planning. Subject to such regulations being adhered to it is considered that there would be no significantly greater risk arising from the transportation and storage of fuel above the current situation.

- 9.112. Third party comment is made in respect of a similar proposal at Sugarswell Business Park (19/01202/F) previously refused and consider there to be no difference to current proposals under consideration. Each application must be assessed on its own merits and whilst there are similarities in the nature or the proposals there are also significant differences to the respective site contexts and appropriate assessment must be undertaken.
- 9.113. Third party comments have also been made in respect of the proposals detrimentally impacting on the value of properties within the vicinity of the site and along the routes serving the site. Property valuation is not a material planning consideration and as such has not been considered in the context of this application.

Human Rights and Equalities

- 9.114. The Human Rights Act 1998 (“HRA”) sets out fundamental freedoms which have been laid out by the European Convention on Human Rights (“ECHR”). In making any decisions, Cherwell District Council (“the Council”) should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.
- 9.115. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).
- 9.116. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application due to the application being publicised by way of neighbour letter and site notice giving affected third parties the opportunity to comment on the application and their views taken into account when considering the application. In this case any comments/concerns raised by third parties are listed above and have been taken into account in assessing the application. Furthermore, should a third party be concerned about the way the application was decided they could complain to the Local Government Ombudsman or if they question the lawfulness of a decision can appeal to the Courts for Judicial Review of the application.
- 9.117. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application does respect the private and family life of neighbours and does not fail to protect the neighbours’ property.
- 9.118. Officers have considered that, in the event that the application is granted planning permission, there will not be any discrimination (or potential discrimination) on neighbours.
- 9.119. S149 of the Equalities Act 2010 (“EA”) sets out what is known as the Public Sector Equality Duty (“PSED”). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who so not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.120. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 10.2. Given the above assessment in the light of current guiding national and local policy context, it is considered that proposals represent an unjustified, inappropriate and unsustainable form of development in this remote rural location. Whilst the proposals could likely be considered acceptable in terms of residential amenity and ecology, it is considered that through significant intensification of the use of the site that would have a detrimental urbanizing effect, which when coupled with the significant associated HGV movements, would fail to preserve the overriding rural character and appearance of the area and would result in harm to the amenities of residents of nearby villages; and further it has not been demonstrated that the proposals could be satisfactorily drained or that that safe and suitable access to the site could be achieved
- 10.3. The addition of this sizeable new storage depot and associated infrastructure would appear as an alien feature in the rural countryside, resulting in a significant and unjustified detrimental impact upon the rural character and appearance of the landscape and open countryside at this location.
- 10.4. However, there remains a need to undertake a balancing exercise to examine whether the adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. It is also necessary to recognise that Section 38 of the Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.
- 10.5. The proposed development would create new employment on the site and development also provides some construction opportunities. In terms of social benefits, the proposal would contribute in meeting demand for fuel .
- 10.6. However, officers consider that the economic and social benefits identified above are not sufficient to outweigh the significant environmental identified harm in this instance. It is considered that there would be significant adverse impacts to the natural environment, through intrusive development which fails to reflect or reinforce the local distinctiveness and unsustainable associated transport, which further conflicts with the environmental and sustainability policies of the Development Plan. As such it is considered the harm and conflict with development plan policy clearly outweighs any benefits in this case.
- 10.7. The proposals are therefore contrary to the above-mentioned policies and as such the application is therefore recommended for refusal for the reasons set out below.

11. RECOMMENDATION

RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW

REASONS FOR REFUSAL

1. The proposed development represents an unjustified and unsustainable form of development in a rural location, which lack opportunities for sustainable travel to and from the site and would in significant adverse impacts on the character of the surrounding environment, for which it has not been demonstrated that exceptional circumstances exist for such development in this unsustainable location. The proposals are therefore contrary to the provisions and aims of Policies SLE1, SLE4 and ESD1 of the Cherwell Local Plan 2011-2031 Part 1

and Government guidance contained within the National Planning Policy Framework.

2. By virtue of its siting, scale and form and associated lighting and significant HGV vehicle movements the proposed development would appear as an alien feature within the rural landscape, intruding into the open countryside. The proposals would have a detrimental visual impact on the rural character and appearance of the locality, causing significant and demonstrable harm to the character and appearance of the area and open rural landscape. The proposals are therefore contrary to Policies ESD13 and 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.
3. The proposals have failed to demonstrate that safe and suitable access with appropriate vision splays can be achieved at the site, to accommodate the proposed significant intensification of the use of the site and associated vehicular movements. The proposals are therefore contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.
4. The proposals would generate frequent heavy-goods vehicle movements through residential areas, including the villages of Drayton and Wroxton and Hardwick and Ruscote on the periphery of Banbury. It has not been satisfactorily demonstrated that the levels of such movements would not adversely affect the amenity of these residential areas and villages, to the detriment of the living environment in these locations. The proposals are therefore contrary to saved Policies TR10 and C31 of the Cherwell Local Plan 1996 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1.
5. The applicant has failed to demonstrate that an appropriate surface water drainage strategy, and mitigation measures necessary in the event of spillage of fuel, can be achieved at the site that would ensure that the proposed development would not be to the detriment of the water environment/surrounding natural environment and that water quality would be maintained and enhanced by avoiding adverse effects; contrary to saved Policy ENV1 of the Cherwell Local Plan 1996, Policies ESD7 and ESD8 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

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