

**Land North and West of Bretch Hill Reservoir  
Adj to Balmoral Avenue Banbury**

**20/01643/OUT**

**Case Officer:** Matthew Chadwick

**Applicant:** Lone Star Land Limited

**Proposal:** Erection of up to 49 homes, public open space and other infrastructure, with all matters reserved except access – revised scheme of 19/01811/OUT

**Ward:** Banbury Calthorpe and Easington

**Councillors:** Councillor Clarke, Councillor Mallon and Councillor Mepham

**Reason for Referral:** Major Development

**Expiry Date:** 21 September 2020

**Committee Date:** 8 October 2020

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**EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

**RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS AND SUBJECT TO A S106 LEGAL AGREEMENT**

**IMPORTANT BACKGROUND**

This planning application is being brought back to Planning Committee because Members voted at the December Planning Committee to re-consider the application. Their principle reason for doing so was the omission from the officer's report of reference to the Banbury Vision and Masterplan SPD and secondarily the lack of clarity over their reasons for their resolution at the October Planning Committee in respect of the principle of development.

**Proposal**

Outline planning permission is sought for up to 49 dwellings including 30% affordable housing. All matters reserved except access which is proposed from Balmoral Avenue to the south of the site. The site is on the western edge of Banbury, to the north of the Broughton Road and surrounded on three sides by existing residential development.

**Consultations**

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

- Banbury Town Council, OCC Drainage, Clinical Commissioning Group

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

- CDC Building Control, CDC Ecology, CDC Landscape Services, CDC Rights of Way, OCC Highways, CDC Planning Policy, CDC Recreation and Leisure, CDC Strategic Housing, Thames Water, CDC Environmental Health

14 letters of objection have been received.

**Planning Policy and Constraints**

A public right of way (ref 120/24/10) runs along the northern boundary to the north-east corner of the site. There are a number of notable protected species which have been recorded as present on the site or within 250m of the site. Within 2km of the site is a Site of Special Scientific Interest (Neithrop Fields Cutting).

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
- Site layout and design principles
- Design, and impact on the character and appearance of the area
- Highways
- Rights of way, access and pedestrian connectivity
- Residential amenity
- Affordable housing
- Flood risk and drainage
- Ecology impact
- Infrastructure
- Other matters

The report considers the key planning issues in detail, and Officers conclude that the proposal is acceptable subject to conditions.

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

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is located on the western edge of Banbury to the immediate west of Bretch Hill. The site comprises approximately 2.8 hectares and is land formerly used for agricultural purposes associated with Bretch Farm but is now scrub. The physical remains of Bretch Farm lie in the south-west corner of the site with a number of buildings in ruin.
- 1.2. To the west is an existing water tower and an underground reservoir under the ownership and control of Thames Water. On three sides the site is bounded by existing residential development.
- 1.3. Most of the site is generally flat with a slight drop in land level from west to east and the site is effectively on the top of the hill. There is also a significant fall on the northern boundary of the site and the rear gardens of properties on Harlech Close. The fall means that the site sits approximately 2.5 metres above these rear gardens.
- 1.4. The proposed access to the site would be off the existing gated entrance from Balmoral Avenue to the south of the site. Balmoral Avenue is a steep road on rising and from the Broughton Road to the south.

### **2. CONSTRAINTS**

- 2.1. The land is predominantly enclosed by hedgerows and well-established mature trees. There is a copse of trees in the northern corner that extends in a linear fashion along the northern boundary backing on to dwellings on Harlech Close. This woodland is classified as deciduous woodland priority habitat.

- 2.2. A public right of way (ref 120/24/10) runs along the northern boundary to the north-east corner to join a hard-surfaced footpath stretching into Bretch Hill. The current footpath within the site is unmarked, not levelled or laid to hardstanding or surfaced and is unlit.
- 2.3. There are several notable protected species which have been recorded as present on the site or within 250m of the site. Within 2km of the site is a Site of Special Scientific Interest (Neithrop Fields Cutting).
- 2.4. The site is dominated by the adjacent telecommunications mast (approximately 48 metres high) and concrete water tower (approximately 22 metres high). A raised reservoir lies immediately to the south east of the site surrounded by grassed embankments and steel palisade fencing.

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

- 3.1. The planning application seeks outline consent for residential development with all matters reserved except access. The proposal comprises the following elements:
  - Erection of up to 49 dwellings;
  - 30% affordable housing;
  - Vehicular access from Balmoral Avenue;
  - Pedestrian access from Balmoral Avenue and via public right of way to Bretch Hill;
  - 0.68 hectares of public open space;
  - Local Area of Play;
  - Informal play space;
  - Sustainable urban drainage systems; and
  - Other supporting infrastructure.
- 3.2. The application proposes vehicular and pedestrian access to be taken from Balmoral Avenue to the south of the site. This is a continuation of the existing road. In addition, the illustrative plan shows the public right of way running along the northern boundary of the site would remain in situ and as is, to provide a link through to Bretch Hill.
- 3.3. Whilst the layout is not submitted for approval, an illustrative layout plan has been submitted to show one way that the development could be delivered. The development proposed comprises up to 49 dwellings. A mix has been provided for illustrative purposes alongside the layout. It is acknowledged in the Planning Statement that the figures submitted are illustrative only and the mix for affordable units would be set by an agreed S106 agreement and the mix for market housing set through the relevant reserved matters application.
- 3.4. The illustrative layout shows the retention of the woodland to the north and this includes an area of public open space, a LAP and informal play space.
- 3.5. In terms of density, the proposed 49 dwellings are provided on approximately 1.52 hectares of developable land resulting in a density of 32 dwellings per hectare.

- 3.6. The application is accompanied by an illustrative site layout and landscape masterplan, Planning Statement, Design and Access Statement, Flood Risk Assessment, Ecological Appraisal and management plan, Air Quality report, Bat report, Utilities assessment, Drainage statement, Tree Report, Transport Statement and a Landscape and Visual Impact Assessment.

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

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

19/01811/OUT – Outline – Erection of up to 70 dwellings, public open space, and other infrastructure, with all matters reserved except access

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

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

- 5.2. Pre-application advice was first given in January 2018 (17/00170/PREAPP refers). It was advised that the site was allocated through Policy H1b of the non-statutory Cherwell Local Plan. The designation is a material planning consideration but carries little weight. The report concluded that careful consideration would need to be given to the landscape impact of the proposed development and design and layout of the proposed development to ensure that satisfactory visual amenity (both perceived and actual) was achieved for future residents. Subject to these matters being satisfactorily resolved, and to the assessment of access and traffic matters and other technical matters, the principle of development was considered to be acceptable.

- 5.3. Limited advice was also given on the affordable housing requirements, developer contributions, landscape and visual impact, residential amenity, impact on trees and access and transport matters.

- 5.4. Advice was given on the requirement to provide suitable access from the site to existing bus stops in that any application should ensure dwellings are within 400m of bus stops in Bretch Hill. It was considered that bringing the existing public right of way across the northern boundary of the site up to a suitable standard to encourage people to use it would likely be too expensive and as it passes through woodland this would be difficult to light and people would avoid it due to personal safety concerns. The officer at the time expressed a preference to providing a footpath connection to Balmoral Avenue to the north which would allow access to bus stops at Chepstow Gardens. This link would also provide access towards schools and local shops.

- 5.5. The pre-application advice concluded that, although there was no pressing need for the release of further housing for development, the presumption in favour of sustainable development would need to be applied. Taking into account the identification of the site within the 2004 non-statutory plan and the apparent wider limited landscape impacts it was officer opinion that the principle of the development of the site could be supported. This was on the basis that it could be demonstrated that development could be appropriately accommodated taking into account the site's constraints.

- 5.6. Pre-application advice was given following the withdrawal of the last application (20/00330/PREAPP refers). It was advised that the principle of development remained acceptable but that – as set out in the published report to Planning Committee in November 2019 – there were a number of issues that needed to be

addressed for development of the site to be supported, pedestrian connectivity, layout and relationship with existing built development, provision of a LAP and the housing mix including affordable housing mix along with biodiversity enhancement and flood risk.

- 5.7. The layout submitted with the pre-app enquiry showed a LAP, which was an improvement on the previous planning application which didn't, although in officers' view it was in the wrong location and needed to be re-sited e.g. within the POS to the east of the proposed built development. The housing mix and affordable housing mix were not far away from being acceptable and the changes required were set out in the officer response.
- 5.8. Officers advised that it remained critically important that the pedestrian and cycleway links are provided and that providing satisfactory pedestrian routes and connectivity in the northern part of the site without detriment to trees or wildlife remained the major challenge with the site in order to bring forward development, i.e. the principle of development would only be acceptable if these issues can be resolved.

## **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **4 September 2020**, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. Letters of objection have been received from 12 households (11 households in the vicinity of the site and 1 household in Kirtlington). The comments raised by third parties are summarised as follows:
- 6.3. Need – no immediate need for additional houses given the ample developments in other areas of Banbury, e.g. Elmwood Park
- 6.4. Local Plan – not an allocated site / not part of the Cherwell Local Plan
- 6.5. Design – the design of the dwellings is not in keeping with those on Balmoral Ave
- 6.6. Footpaths – the proposal would impact on the existing footpaths across the site, dog walkers, etc.
- 6.7. Access – the proposal would create safety issues for residents
- 6.8. Impact on highway safety – the unsuitability of extra traffic; the very steep hill; the potential of parking problems; noise, heavy machinery, large construction vehicles, etc. The submitted transport assessment showed that speed limits are exceeded by between 15 and 33% (Dec 2018 figures); difficulties for parking for tradesmen and lorries during construction; blind corners when exiting from Briggs Road, Dorchester Grove or Denbigh Close; difficulties caused by multiple accesses close together on Broughton Road; the condition of Balmoral Ave is not suitable for construction and future use by occupiers of the proposed development
- 6.9. Impact on wildlife – e.g. badgers in the field, bats in the farmhouse
- 6.10. Drainage/Water – impact on water pressure and on foul water drains

- 6.11. Light pollution – the proposal would increase light pollution in the area
- 6.12. Noise – development of this site would make Balmoral Ave a noisier place
- 6.13. Crime – additional houses would bring more crime into Balmoral Ave
- 6.14. Issues raised with the first application not addressed with the second application
- 6.15. Condition of any permission given - Any permission given should be subject to a requirement for any prospective developer to engage “a recognised independent road testing consultant carry out a detailed condition report and assess [its] suitability for both the construction traffic and that from the proposed additional homes. Such a report to include road pavement deflection testing. Subject to their findings it may require a Developer to re-construct the entire length of Balmoral Avenue (Broughton Road Side) should planning approval be granted”.
- 6.16. Condition of any permission given – swift nest bricks to be incorporated in the development as a biodiversity enhancement, swifts now being amber-listed as birds of conservation concern.
- 6.17. The comments received can be viewed in full on the Council's website, via the online Planning Register

## 7. RESPONSE TO CONSULTATION

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. BANBURY TOWN COUNCIL: **Objects**, for the following reasons: 1, Adverse impact on local highway network - Broughton Road junction is not considered suitable for the additional traffic that will be generated. 2. The site is not within the adopted Local Plan and the area has a 3 year housing supply so the additional housing is not needed on a site that due to the size and positioning of the large adjacent structures will have a poor standard of amenity.

### OTHER CONSULTEES

- 7.3. CDC LANDSCAPING: **No objections** – the LVIA's weighting and judgements are reasonable. The masterplan is generally acceptable. The attenuation basin when full must not flood into adjacent gardens and may need re-siting. Detailed landscape proposals play area proposals (with construction details) and tree pit detail are required under relevant planning conditions.
- 7.4. CDC ECOLOGY: **No objections**, subject to conditions relating to a CEMP, LEMP and full lighting strategy.
- 7.5. CDC LEGAL SERVICES RIGHTS OF WAY: **No objection** – the proposal would not require any diversion to the public footpath numbered 120/24 which extends along the northern boundary of the site
- 7.6. OCC HIGHWAYS: **No objections subject to conditions** (provision of new permanent public footpaths, access full details, Travel Information Pack, Travel Plan Statement and Construction Traffic Management Plan, **and s106 financial contributions** (see below) **and s278 agreement**.)

- Public transport services - £49,000 (£1,000 per dwelling) – towards the strengthening and enhancing of the B5 bus service which runs through Bretch Hill
  - Public rights of way - £5,000 – to improve the surfaces of all routes within 2km and to take account of the likely increase in use by residents of the development as well as new or replacement structures like gates, bridges and seating, sub-surfacing and drainage to enable easier access, improved signing etc.
  - Strategic highway contribution - £62,772 – a) Bridge Street/Cherwell Street eastern corridor improvements and b) A361 Bloxham Road/Queensway/Springfield Avenue junction movements.
  - Developer to enter into a S278 agreement to secure mitigation/improvement works including:
    - o A dropped kerb crossing facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill.
    - o Provision of the site access and pedestrian footways as shown by a plan agreed with Highway Authority.
    - o Improvement of Public Right of Way 120/24 into a “blacktop” footpath which is illuminated to OCC standards. The footpath would need to connect the development to Bretch Hill and Balmoral Avenue north or Harlech Close. This could take the form of a self-binding gravel type path suitable for all users, without the need to tarmac.
- 7.7. In other comments, the vehicular access in the proposed location is deemed acceptable. The highway boundary appears to extend in full width to the site boundary; however, the applicant should verify this to ensure that a road of adequate width including footways can be extended into the site.
- 7.8. Pedestrian and Cycle Access – The proposals show two pedestrian and cycle links, the Broughton Road/Balmoral Avenue junction to the south and a connection linking the site to Balmoral Avenue North. The site still lacks a credible east/west connection but since footpath 120/24 is, at best, an illegible and muddy path we would not consider this footpath in its current condition a credible option for pedestrians or cyclists.
- 7.9. As the footpath could provide a good option for east/west connectivity and provide easy access to the bus stop opposite Mascord Road junction, we consider it imperative that it receive improvements. The proposals demonstrate a footpath linking the development and footpath 120/24 together so improvements to it would be a common sense approach to providing an effective east/west connection to the wider Banbury area. This could be done via resurfacing providing a self-binding gravel type path, with no tarmacking required.
- 7.10. Public Transport – Stops near to Chepstow Gardens and Bretch Hill serve the B5 bus which is a much more frequent service (4 buses per hour during weekday times). OCC is seeking to add additional value including route options, extended hours and extend the weekend hours of the route.
- 7.11. Traffic Impact – The overall conclusions of the Transport Statement as it relates to trip rates are accepted. The justification for not assessing the Queensway roundabout is considered sound. The methodology used to generate the final trip rates is accepted and it is noted that the Balmoral Avenue/Broughton Road junction is within capacity.

7.12. Travel Plan – For a development of this size, the slimmed down version of a travel plan, a Travel Plan Statement (TPS) and a travel information pack will be required. Our approved guidance contains a simple form to complete to ensure that the TPS contains all the necessary information.

7.13. OCC DRAINAGE – **Objects.** No objections in principle with the proposed method of disposal via infiltration but expresses concerns with this being predominantly managed as a site solution in large volumes adjacent to existing properties. In line with local and national guidance, we expect surface water to be managed at source (i.e. close to where it falls) with residual flows then conveyed downstream to further storage or treatment components, where required. There is space throughout the site to provide storage or infiltration features to minimise the requirement for a large drainage feature so close to existing properties.

7.14. OCC EDUCATION: No objection subject to S106 contributions as follows:

□ Primary education - £269,976 – for the expansion of primary capacity serving the Banbury area. This is based on 21.39 being the number of primary pupils expected to be generated from the development. The estimated cost per pupil of expanding a primary school is £15,256.

□ Secondary education (including sixth form) - £407,462 – towards a new secondary school in Banbury. This is based on 15.06 being the number of secondary and sixth form pupils expected to be generated from the development. The estimated cost per pupil of building a new 600-place secondary school is £31,159.

7.26. The above contributions are based on a unit mix of:

6 x 1 bed dwellings

13 x 2 bed dwellings

21 x 3 bed dwellings

9 x 4 bed dwellings

7.15. OCC ARCHAEOLOGY: **No objections**

7.16. CDC STRATEGIC HOUSING: **Comments.** The mix in the pre-app scheme has been changed in line with our request. The units are therefore:

Rented Units:

4 x 1 bed 2-person maisonettes

2 x 1 bed 2-person houses

2 x 2 bed 4-person houses

2 x 3 bed 6-person houses

1 x 4 bed 7-person house

Total – 11 units



We would seek a social rent tenure for the rented units. The one-bed houses are to fulfil an unmet need and we would like these to be retained in any future planning applications.

Shared Ownership Units:

2 x 2 bed 4-person houses

2 x 3 bed 5-person houses

Total – 4 units

- 7.17. In terms of space, all rented dwellings must comply with the DCLG Technical housing standards (March 2015) – nationally described space standard.
- 7.18. We expect at least 50% of the social rented dwellings to meet Approved Document Part M4(2) Category 2. These units are especially suited to ground floor maisonettes in order to provide maximum accessibility.
- 7.19. Regarding the car parking, we note that the applicant has addressed comments from the Planning Officer so that parking along the frontages has been removed and more streets and trees are shown on the layout. However, we would like to see a better relationship to the car parking for some plots, especially plots 35 & 36, and to plots 37-39 if possible. We did not comment on this previously as these units were originally proposed as market housing.
- 7.20. We expect 1-bedroom dwellings will have a minimum of 1 parking space per unit, and all 2, 3- and 4-bedroom dwellings should have a minimum of 2 parking spaces per unit. Car parking spaces for units compliant with Part M4(2) should meet the requirements of the relevant part of the document.
- 7.21. The Landscape and Visual impact statement understandably considers the impact of the site from existing viewpoints on the fringes of the site, but as the mobile phone mast and water tower are very prominent features within views of the site, it would be reassuring to see a drawing which shows the relationship between the dwellings (assumed to be maisonettes) on plots 40-43, which have these tall structures behind them, to demonstrate the visual impact and the enhancement that the trees will provide.
- 7.22. To ensure the creation of mixed and cohesive communities the affordable housing should be fully integrated with the market housing (the proposed clustering and distribution of the affordable housing is good). Affordable housing should also be visually indistinguishable from the market housing. The Registered Provider taking on the affordable housing units would need to be agreed with the Council.
- 7.23. CDC COMMUNITY INFRASTRUCTURE: **No objections subject to s106 financial contributions** in line with the adopted 2018 SPD developer contributions guidance. These are:
- Off-site Outdoor Sports Contribution – 49 dwellings x £2,017.03 per dwelling contribution = £98,834.47 towards pitch and pavilion improvements at North Oxfordshire Community use site or the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.
  - Off-site Indoor Sports Contribution – 49 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £40,912.39 towards Banbury Indoor Tennis Centre and/or the improvements of leisure centre provision in the locality.

- Community Hall Contribution – 70 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £56,018.74 towards improvements at The Hill or Sunshine Centre in Banbury.

7.24. CDC WASTE AND RECYCLING: **No response at the time of writing this report.** Any response received prior to the committee meeting will be included in the written updates.

7.25. CLINICAL COMMISSIONING GROUP: **Objects** in the absence of mitigation for the health requirements of the additional population associated with this development. OCCG notes (as submitted to Cherwell DC in January 2017 for inclusion in the Infrastructure Development Plan) that primary medical care in Banbury is at capacity, and further housing growth will require additional or expanded infrastructure to be in place. OCCG therefore object to this application pending agreement of appropriate contributions to primary care infrastructure. Seeks a developer contribution of **£42,336** to support improvement of local primary care infrastructure if this development were to go ahead. This calculation is based on OCCG's adopted policy to use a calculation of 2.4 x number of dwellings x £360 for contributions to health infrastructure. The size of this development does not justify a new separate health centre or equivalent, so we would anticipate funds being used for enhancing existing primary care medical infrastructure to meet the needs of a growing population.

7.26. WATER AUTHORITY: **No objection** subject to conditions and informative notes. Thames Water notes that the existing foul water network is not able to accommodate the needs of this development proposal, but advises this issue can be addressed through a planning condition: "No properties shall be occupied until confirmation has been provided that either:- 1. All wastewater network upgrades required to accommodate the additional flows from the development have been completed; or- 2. A housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan." Reason - Network reinforcement works are likely to be required to accommodate the proposed development. Any reinforcement works identified will be necessary in order to avoid sewage flooding and/or potential pollution incidents. The developer can request information to support the discharge of this condition by visiting the Thames Water website at [thameswater.co.uk/preplanning](http://thameswater.co.uk/preplanning). Should the Local Planning Authority consider the above recommendation inappropriate or are unable to include it in the decision notice, it is important that the Local Planning Authority liaises with Thames Water Development Planning Department (telephone 0203 577 9998) prior to the planning application approval.

7.27. *Officer comment:- Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.*

7.28. *In this particular instance, the above financial payments are not considered to be material to the decision as they would not make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority and hence the*

above response from the Council's Finance department is therefore provided on an information basis only.

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

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

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

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- PSD1: Presumption in Favour of Sustainable Development
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land – Brownfield Land and Housing Density
- BSC3: Affordable Housing
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDS)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD15: The Character of the Built and Historic Environment
- Banbury 10: Bretch Hill Regeneration Area

### NON-STATUTORY CHERWELL LOCAL PLAN 2011

Policy H1b: Allocation of sites for residential development (*the policy identifies the site for 70 dwellings*)

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

- C28 – Layout, design and external appearance of new development
- C30 – Design control

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- EU Habitats Directive
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Human Rights Act 1998 ("HRA")

- Equalities Act 2010 (“EA”)
- Banbury Vision and Masterplan SPD
- Cherwell Residential Design Guide SPD
- Cherwell Developer Contributions SPD

## 9. APPRAISAL

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

- Principle of development
- Site layout and design principles
- Design, and impact on the character and appearance of the area
- Highways
- Rights of way, access and pedestrian connectivity
- Residential amenity
- Affordable housing
- Flood risk and drainage
- Ecology impact
- Infrastructure
- Other matters

### Principle of Development

9.2. Planning law requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 12 of the National Planning Policy Framework (NPPF) makes clear that it does not change the statutory status of the development plan as the starting point for decision making. Proposed development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. Cherwell has an up to date Local Plan and can demonstrate a 5 year housing land supply. However, the NPPF is a significant material consideration.

### *NPPF*

9.3. Paragraph 11 of the NPPF explains the Government’s presumption in favour of sustainable development. For decision-taking this means approving proposals that accord with an up to date development plan and in cases where there are either no relevant development plan policies or those policies important for determining the application are out of date; granting permission unless the NPPF policies provide a clear reason for refusal or any adverse impacts significantly and demonstrably outweigh the benefits.

### *Development Plan*

9.4. The Development Plan comprises the saved policies of the 1996 adopted Cherwell Local Plan (CLP1996) and the 2015 adopted Cherwell Local Plan (CLP 2015). The policies important for determining this application are referenced above.

9.5. Policy PSD1 of the CLP 2015 accords with the NPPFs requirement for sustainable development and that planning applications that accord with policies in the statutory Development Plan will be approved without delay.

9.6. The CLP 2015 seeks to allocate sufficient land to meet District Wide Housing needs. The overall housing strategy is to focus housing growth at the towns of Bicester and Banbury.

- 9.7. The site is partly located in the Bretch Hill Regeneration Area (Policy Banbury 10), which states that development proposals will be permitted for small scale redevelopment/renewal that would result in improvements to the existing housing stock and community facilities.
- 9.8. Policy H1b of the Non-Statutory Cherwell Local Plan identifies the site as suitable for residential development of approximately 70 dwellings. This document was never formally adopted as part of the Development Plan but it does hold some weight in terms of decision making in the District, albeit much more limited. As a strategic plan, the CLP 2015 does not allocate sites under the threshold of 100 residential units, thus not considering this site.

#### *Assessment*

- 9.9. The Council's 2020 Annual Monitoring Report (AMR) confirms that the District can demonstrate a 4.8 years housing land supply. In the circumstances that a LPA cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer), there is a presumption in favour of sustainable development and ordinarily the circumstances at paragraph 11d of the NPPF are engaged – in short development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 9.10. However, in respect of the Oxfordshire Authorities including Cherwell there is a Written Ministerial Statement (“WMS”) made in September 2018 concerning the Housing and Growth Deal, which is a significant material consideration. This sets out the requirement for a 3 year (rather than 5 year) supply of deliverable housing sites (with the appropriate buffer) from the date it was made (12/09/2018) until the adoption of the Joint Statutory Spatial Plan in each area, providing the timescales in the Housing and Growth Deal are adhered to. Therefore, in this case, the tilted balance set out by Paragraph 11d is not engaged because the Housing Supply requirement for the District should be taken to be 3 years in accordance with the WMS.
- 9.11. The Council's housing strategy is to focus housing growth at sustainable locations, especially at Banbury and Bicester (B.88, page 57 of the CLP 2015). This strategy will require the development of appropriate greenfield sites, in addition to brownfield sites. The application site is a greenfield site on the edge of Banbury, well related to the settlement and bounded to the north and south by residential development.
- 9.12. In addition, the site was identified for development within the 2004 Non-Statutory Plan but given that Plan's status the site was not allocated. The CLP 2015 was a Part 1 document, allocating strategic sites (100+ dwellings) and was intended to be followed by a Part 2 which would have allocated smaller sites for development. The CLP 2015 did not allocate sites for less than 100 dwellings. It was on this sole basis that the site was not allocated within the CLP 2015.
- 9.13. While the 2015 Local Plan, as a key part of the Development Plan, is a starting point for decision making, it is not the end point and the Council cannot rely solely on the allocations in the 2015 Local Plan to meet its housing need. The 2015 Local Plan does not have the scope to allocate non-strategic sites and therefore the site's non-inclusion does not make it unacceptable in this regard. It would be unsafe and unreasonable to say that the site is not acceptable for development simply because it is not allocated in the 2015 Local Plan.
- 9.14. Following the October Planning Committee at which this application was first considered, the applicant brought to the Council's attention that the Officers' report

from the 8 October 2020 committee meeting did not mention the Banbury Vision & Masterplan (“BVM”) SPD, which is a material planning consideration for this application.

- 9.15. The BVM SPD establishes the long-term vision for the town and identifies the main projects and initiatives to support the town’s growth.
- 9.16. The applicant had made submissions that the BVM SPD includes the site in the built form of the settlement and that it identifies the site as being a ‘future development site’.
- 9.17. However, the BVM SPD (as set out within the Adoption Statement of 19 December 2016) *‘builds upon and provides further guidance to support the adopted Cherwell Local Plan 2011-2031 Part 1’*. While it is a material consideration, the BVM cannot (and does not) allocate sites for development. Allocation can only be done through the Local Plan or Neighbourhood Plan process. In any case, the plans do not show the site as part of the existing settlement.
- 9.18. Officers do not consider the BVM SPD has any significant bearing on the acceptability or otherwise of the principle of development.
- 9.19. The agent (Savills) submitted a letter to the Council on 25<sup>th</sup> November referring to the housing trajectory set out at Section E of the 2015 Local Plan which includes 369 dwellings to come forward in Banbury up to 2031 on sites of 10 or more dwellings which are not allocations in the Local Plan Part 1. This 269 requirement has been met, although the figure is not a ceiling on development.
- 9.20. The letter from RB also refers to the Oxfordshire Growth Board Meeting on 24 November 2020 which considered the Written Ministerial Statement in light of the new programme for the Oxfordshire 2050 Plan. The agenda papers note that, “In the conversations with MHCLG on extending the timetable for the Plan, they have indicated that an extension to this flexibility is not likely to be supported.” At the time of writing the WMS remains in place and no formal notification of withdrawal of the statement has been received.

### *Conclusion*

- 9.21. Considering (1) the identification of the site for development within the 2004 non-statutory plan (albeit it holds very limited weight), (2) the physical location of the site on the edge of Banbury and it being bounded by existing residential development on three sides, (3) that the proposal would assist in the delivering of new homes and meeting overall district housing requirements, including affordable housing and (4) the presumption in favour of sustainable development, and notwithstanding it not being allocated for development (its non-allocation is simply because it is a site of less than 100 dwellings) it follows that the development is acceptable in principle.

### Site Layout and Design Principles

#### *Policy Context*

- 9.22. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and high quality design meeting high design standards and complementing any nearby heritage assets. The National Planning Policy Framework is clear that good design is a fundamental to what the planning and development process should achieve.

- 9.23. Policy BSC10 of CLP 2015 outlines the requirements for open space, outdoor sport and recreation provision. Policy BSC11 sets out the local standards of provision for outdoor recreation including children's play space.
- 9.24. The Council's Residential Design Guide SPD seeks to ensure that new development responds to the traditional settlement pattern, character and context of a village. This includes the use of continuous building forms along principle routes and adjacent to areas of the public open space, the use of traditional building materials and detailing and form that respond to the local vernacular.

#### *Assessment*

- 9.25. The application is in outline with all matters reserved except for access. The application is accompanied by an indicative concept layout. This layout, in contrast to that submitted with the last application, embraces the principles set out in the 2018 Residential Design Guide, including:
- active surveillance from proposed dwellings onto the footpath which is broadly parallel to the northern boundary and terminates at the north/north-eastern corner;
  - active surveillance onto the public open space now being achievable, provided corner turner dwellings are used – this can be secured at reserved matters stage;
  - LAP now provided on the site;
  - parking now provided to the sides of dwellings and in rear courtyards rather than on frontages; and
  - provision of cycle link from Balmoral Avenue south to north.
- 9.26. Whilst design and materials would be assessed under a reserved matters application it is considered that, given the location of the site on the edge of the town and adjacent existing residential development, appropriate levels of control should be secured at any such detailed application stage to ensure compliance with design principles reflective of those within the area and wider district.
- 9.27. The proposed landscaping, with retention of the existing tree lined boundaries, woodland and introduction of landscape buffers would provide a softer edge to the proposed development allowing for a transition to the rural landscape to the west.
- 9.28. That said, whilst every application would need to be assessed on its own planning merits at the time of the of any such application, officers are confident of the level of control that could be safeguarded through ensuring broad compliance with any approved plans secured by way of appropriate condition attached to any such permission.
- 9.29. Having considered the application at its October meeting, the Planning Committee resolved to refuse the application on three grounds, one of which was that by virtue of its siting in close proximity to the water tower and telecommunications mast, the proposed development would result in significant and demonstrable harm to the living conditions and general amenity of the future occupiers of the proposed development.
- 9.30. Between the October Committee meeting and the December meeting the applicant submitted an alternative indicative layout for part of the site nearest to the water

tower and telecommunications mast to show how the layout might be amended to remove residential development from the area closest to the water tower and the telecoms mast, e.g. at least the same distance away from those two structures as the latter's height.

- 9.31. Notwithstanding the applicant's alternative sketch layout, officers note that the proposal is for 'up to' 49 dwellings and layout is a reserved matter. In officers' view, any such harm is capable of being addressed through an appropriate layout of development which may include a reduced number of dwellings.

### *Conclusion*

- 9.32. It is considered that while the submitted *indicative* layout would not be acceptable, with some relatively minor amendments it would be acceptable and, importantly, (1) does not form part of any approval of the current application if supported and (2) demonstrates that 49 dwellings can be delivered on the site, and also allow for the provision of a well-designed, safe, accessible and well-connected environment with an appropriate tenure mix. As such, the proposal accords with Policies BSC10, BSC11 and ESD15 of the CLP 2015 and government guidance within the NPPF.

### Impact on the character and appearance of the area

- 9.33. Government guidance contained within the NPPF towards achieving well-designed places states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The NPPG goes on to note that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Further, Paragraph 130 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.

- 9.34. Paragraph 127 of the NPPF states that planning decisions should ensure that developments:

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



9.35. Policy ESD15 of the CLP 2015 states that: “New development proposals should:

- Contribute positively to an area’s character and identity by creating or reinforcing local distinctiveness and respecting local topography, including skylines, valley floors, significant trees, historic boundaries, landmarks, features or views.
- Respect the traditional pattern routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly defined active public frontages.”

9.36. 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 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;
- Harm the setting of settlements, buildings, structures or other landmark features;
- Harm the historic value of the landscape.”

9.37. Saved Policy C28 of the CLP 1996 exercises control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context and Saved Policy C8 seeks to limit sporadic development beyond the built limits of settlements.

9.38. Saved Policy C33 states the Council will seek to retain any undeveloped gap with is important in preserving the character of a loose knit settlement structure or maintaining the setting of heritage assets.

9.39. The Cherwell Residential Guide SPD (2018) builds on the above policies and provides a framework to deliver high quality locally distinctive development.

9.40. The Non-Statutory Local Plan also contains relevant policies as set out below: Policy EN31 (Countryside Protection) (like its equivalent policy C9 in the CLP 1996) states that beyond the existing and planned limits of the towns of Banbury and Bicester, development of a type, size or scale that is incompatible with a rural location will be refused.

9.41. Policy EN34 (Landscape Character) sets out criteria that the Council will use to seek to conserve and enhance the character and appearance of the landscape through the control of development. Proposals will not 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

- harm the setting of settlements, buildings, structures or other landmark features
- harm the historic value of the landscape

*Assessment*

- 9.42. Given the site's location on the edge of the town, its rural location and on top of the hill, the proposed development has the potential to cause harm and each of these criteria needs to be carefully considered.
- 9.43. The western boundary to the site is heavily treed and with well-established mature hedgerow providing a strong visual barrier to the wider open countryside beyond the site. The site visually is well-contained by tree-lined boundaries and being bounded on three sides by existing residential development. It is also dominated by the adjoining water tower and telecommunications tower.
- 9.44. The application is accompanied by a Landscape and Visual Impact Assessment (LVIA) produced by Mood Landscape Ltd, which seeks to introduce the principle of development into the context of the existing landscape character, visual environment and landscape related policy to assess the ability of the site to integrate future development. In terms of the visual assessment carried out by Mood Landscape, fieldwork was undertaken to identify several viewpoints in the immediate and wider setting of the site.
- 9.45. Within the Oxfordshire Wildlife & Landscape Study the site is identified as being adjacent the 'Farmland plateau' landscape type. Farmland plateau landscape type are identified as being:
- Level or gently rolling open ridges dissected by narrow valleys and broader vales,
  - Large, rectangular arable fields enclosed by low thorn hedges and limestone walls,
  - Rectilinear plantations and shelterbelts,
  - Sparsely settled landscape with few nucleated settlements,
  - Long, straight roads running along the ridge summits.
- 9.46. As noted above the site is a 'greenfield' site set at the edge of Banbury. It is described that the site is consistent with some of the key characteristics of the farmland plateau character area. It is a geometric elevated plateau with wooded rectilinear plantations of field maple, ash and oak on its boundaries. However, it has some distinct differences to the neighbouring farmland plateau character including the imposing water tower and mobile telephone mast on the site boundary and close proximity of neighbouring houses, which gives the site an urban fringe character and heavily dilutes any farmland character.
- 9.47. Although the site itself is not within the farmland plateau character area, the western boundary area of the site forms the eastern boundary of this character area and therefore the impact on the adjoining character area is relevant to the study and is categorised as being of medium sensitivity. The proposed development would bring the built environment closer to the boundary of the character area. The current transitional zone that the site provides between the existing housing in Bretch Hill and the farmland plateau would change in character. However, this is the only example of a transition zone being between the built form and the character area

and the close proximity of housing to the edge of the character area is considered to be typical of the character along this boundary.

- 9.48. The LVIA asserts that the development would make a positive contribution to the character of the site area as it directly addresses and enhances an untidy fringe of the town and would help absorb the impact of the water tower and mobile phone mast in the urban fabric of the town. This coupled with the development bringing the boundary of the built form in line with the boundaries to the north and south represents a negligible overall impact on the farmland plateau character area and would not result in a significant impact on the character area.
- 9.49. The Landscape Visual Impact Assessment concludes that “the site is heavily influenced by the surrounding housing and most notably the adjoining water tower and mobile phone mast, which are detracting features and dominate the view across the site. These necessary but overbearing urban influences coupled with the unkempt rough grassland create a site, which is typically urban fringe in character.
- 9.50. The addition of properties and the associated infrastructure within the site will change its character from being urban fringe to urban”
- 9.51. The Council’s Landscape Officer (CLO) has assessed the proposals and accompanying LVIA and associated assessment of key viewpoints. The CLO raises no objections, his comments relating to a detailed layout – which is a reserved matter and not for assessment here, e.g. seeking the relocation of the attenuation basin to ensure it never floods residents’ gardens. The CLO requests the inclusion of several planning conditions should permission be granted, although landscaping is a reserved matter and so these matters are better handled by way of informative notes.

#### *Conclusion*

- 9.52. Officers consider that residential development of this site is generally acceptable in terms of the impact upon the character of the area and wider open countryside. This is demonstrated by a satisfactory Landscape Visual Impact Assessment. Any harm that would be caused to the wider landscape setting would not be so significant to warrant a reason to refuse the application.

#### Highway safety and vehicular access

#### *Policy context*

- 9.53. 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.
- 9.54. 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.
- 9.55. Both Policies ESD15 and SLE4 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”.

- 9.56. Policy TR7 states that: ‘Development that would regularly attract large commercial vehicles or large numbers of cars onto unsuitable minor roads will not normally be permitted’.

#### *Assessment*

- 9.57. All matters are reserved except access. The development would include a new access from Balmoral Road (south) to serve the new housing. This would extend from the existing highway where there is currently a field access at the end of the highway. Pedestrian footpath would also be included with the access connecting with the existing footpath on Balmoral Avenue.

- 9.58. The Local Highway Authority (LHA) advises the proposed vehicular access is acceptable based on the information submitted. In terms of traffic impact, the overall conclusions of the Transport Statement are accepted. The LHA is content with the methodology used to generate the final trip generation figures and it is noted that the Balmoral Avenue/Broughton Road junction is *within capacity*.

- 9.59. 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’.

- 9.60. The LHA raises no objection to the application on the basis of highway safety.

- 9.61. The LHA also requests financial contributions to Bridge Street/Cherwell Street eastern corridor improvements. A361 Bloxham Road/Queensway/Springfield Avenue junction improvements, enhancement of public transport services by addition extended route options, hours and weekend hours to the B5 bus service on Bretch Hill and a rights of way contribution towards mitigation measures to footpaths within 2km of the site.

- 9.62. There have been a significant number of neighbour objections relating to the proposal’s impact on the safety of the local highway network, specifically relating to the unsuitability of extra traffic, the steep hill accessing the site, the potential of parking problems; noise, heavy machinery and large construction vehicles. These concerns are noted but given that the LHA has not objected to the application it is considered that the proposal is acceptable in this regard and that any refusal on grounds of highway safety could not be substantiated at appeal.

#### *Conclusion*

- 9.63. In light of the LHA’s advice, and subject to conditions, S106 contributions and an obligation to enter into a S278 agreement, it is concluded that the proposal would not have a significant adverse impact upon the safe and efficient operation of the highway network, and therefore complies with Policies SLE4 and ESD15 of CLP 2015 in this regard and government guidance within the NPPF.

#### Rights of Way, access and pedestrian connectivity

### *Policy Context*

- 9.64. The National Planning Policy Framework outlines three overarching objectives being economic, social and environmental. From a social perspective the NPPF discusses achieving sustainable development means supporting “strong, vibrant and healthy communities.... By fostering a well-designed and safe built environment”. At paragraph 102(c) the NPPF requires transport issues to be considered at the earliest stages of development proposals so that opportunities to promote walking, cycling and public transport use are identified and pursued”.
- 9.65. At paragraph 122 section c) the NPPF states that planning decisions should support development which make efficient use of land, taking into account “the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit car use”.
- 9.66. CLP 2015 Policy SLE4 relates to improved transport and connections. It supports the NPPF where it states; “all development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling.”
- 9.67. CLP 2015 Policy Banbury 10 requires the layout of new development to enable a high degree of integration and connectivity with the existing communities and to support improve walking and cycling connections to the town centre.
- 9.68. The Cherwell Residential Design Guide SPD gives advice on routes for pedestrians and cyclists and states they “should be safe, direct, attractive and legible”. The SPD sets out guidance on how developments should respond to the site context and this includes where can access and connection to the wider network be gained and whether there are existing movement routes that should be retained. The SPD also poses questions about how the scheme can connect into the surrounding street and footpath/cycleway network and how does the site relate to existing public transport routes.
- 9.69. In addition, Oxfordshire County Council Residential Design Guide requires all developments of more than 50 homes to be served by at least an hourly bus service and for homes to be within 400m walkable distance of a bus stop.
- 9.70. Policy 34 of LTP4 states that “Oxfordshire County Council will require the layout and design of new developments to proactively encourage walking and cycling, especially for local trips, and allow developments to be served by frequent, reliable and efficient public transport”. One of the ways this is done is “ensuring that developers promote and enable cycling and walking for journeys associated with new development, including through the provision of effective travel plans”.

### *Assessment*

- 9.71. A public right of way (footpath 120/24) follows the northern boundary of the site connecting the open countryside to Bretch Hill. The footpath, which is currently unsurfaced and unlit, runs along the tree line adjacent the boundary and then through the woodland to the northeast. The path is currently a muddy track, and in places is difficult to distinguish as a path because of the vegetation on and around it.
- 9.72. The bus stop on Broughton Road serves 4 buses a day and cannot be considered a credible bus service and therefore the nearest bus stops to the site are in Bretch Hill, at Chepstow Gardens and Hampden Close on Bretch Hill. These are a 1 mile walk away using the Broughton Road access if no other credible pedestrian access

is provided at the north of the site. It is therefore critical for accessibility to provide that connectivity between the site and the surrounding development and there were concerns with the previously withdrawn scheme regarding the lack of pedestrian and cycle links.

- 9.73. The development as now proposed has sufficient pedestrian and cycle links to the surrounding residential area, bus stops and amenities. The proposals now show pedestrian links through to the north of the site to join the development to Balmoral Avenue (north), their provision meaning that the aforementioned bus stops would be within 400m of the site, and include provision for the improvement of the existing right of way.
- 9.74. The opening up of the public right of way to make it safer and more accessible, particularly through the woodland area, has the potential to be detrimental to ecology and biodiversity. The need to light the footpath would have an impact on species using the tree lined boundary as a foraging and migrating route. However, based on the current application submission, and in light of the advice from OCC Highways and CDC Ecology, officers now have sufficient comfort that the footpath can be retained and upgraded to provide active surveillance and safe movement without detriment to trees or ecology. This would need to be subject to either conditions or legal agreement.
- 9.75. As the wooded area is a Priority Habitat a careful balance would need to be achieved as to how much, if any, of the trees could be removed. Safeguarding the priority habitat and biodiversity net gain is a priority in planning and must be balanced against the need to firstly deliver much need housing and then providing sustainable, safe and accessible connections to the existing built environment and facilities.

#### *Conclusion*

- 9.76. For the reasons set out above, the site as now proposed has sufficient pedestrian and cycle links to the surrounding residential area, bus stops and amenities. The current application is accompanied by sufficient information relating to the proposed use of the public right of way along the northern boundary as a pedestrian link. Subject to conditions and/or legal agreement, the current proposal would therefore provide for retention and enhancement of the right of way, plus a new pedestrian connection from the site to Balmoral Avenue (north) such that the development would enable a high degree of integration and connectivity with the existing communities and to support improve walking and cycling connections to the town centre, compliant with national and local planning policy as listed in the paragraphs above.

#### Residential amenity

##### *Policy Context*

- 9.77. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 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'.

##### *Assessment*

- 9.78. The application is in outline only. Any detailed proposals would need to have due regard to requirements of Section 6 of the Residential Design Guide SPD about appropriate standards of amenity for both existing and future residents. Appropriate positioning and scale of dwellings, boundary treatments and the nature of such treatments could be given due consideration at reserved matters stage.
- 9.79. The nearest residential properties to the site would be on Balmoral Avenue north, Harlech Close to the north and Balmoral Avenue south to the south. In terms of the properties along Balmoral Avenue north and Harlech Close these are to the north of the boundary of the proposed site separated by well-established trees its entire length. It is considered that, subject to appropriate scale and design of any proposed dwellings along the northern boundary of the site, and retention and potential enhancement of existing boundary planting it is likely that a satisfactory layout could be achieved that would avoid any significant unacceptable impacts on the residential amenity of the neighbouring residential properties.
- 9.80. Existing properties along Balmoral Avenue South would sit side on to the site and face the access road. They are currently separated from the site by some shrubs, hedgerow and fencing. Again, subject to a satisfactory layout being achieved and any proposed landscaping and planting, it would avoid any unacceptable impacts on the residential amenity of these neighbouring properties.
- 9.81. Assessment of internal amenity with the proposed dwellings would be a matter for consideration at any reserved matters or detailed application stage. Whilst only indicative at this stage, the concept layout indicates an appropriate layout that would provide for both public and private outdoor amenity space that would allow for an acceptable standard of living to be achieved for potential future occupants.

#### *Conclusion*

- 9.82. Given the above, officers are satisfied that the development can be made acceptable in residential amenity terms, both for existing residents neighbouring the site and future occupiers, with acceptable details to be secured at reserved matters stage.

#### Affordable housing

##### *Policy Context*

- 9.83. The NPPF advises that in order to create sustainable, inclusive and mixed communities, Local Planning Authorities should plan for a mix of housing, reflect local demand and set policies for meeting affordable housing need. Policy BSC4 of the CLP 2015 requires new residential development to provide a mix of homes in the interests of meeting housing need and creating socially mixed and inclusive communities. Policy BSC3 requires development such as this are to provide 30% affordable housing on site and provides details on the mix that should be sought between affordable/social rent and shared ownership. Policy BSC2 requires that to make efficient use of land that new residential development should be provided at a net density of at least 30 dwellings per hectare.

##### *Assessment*

- 9.84. On a development of 49 units Policy BSC3 would require 15 units to be provided as affordable housing. Of these 15 affordable units, the Strategic Housing Team recommends an indicative mix of tenures and sizes of the following:
- 4 x 1 bedroom 2 person maisonette for social rent

- 2 x 1 bedroom 2 person house for social rent
- 2 x 2 bedroom 4 person house for social rent
- 2 x 2 bedroom 4 person house for shared ownership
- 2 x 3 bedroom 5 person house for shared ownership
- 2 x 3 bedroom 6 person house for social rent
- 1 x 4 bedroom 7 person house for social rent

9.85. This represents a 70/30 split between social rent and shared ownership units as stated in the adopted Local Plan Part 1 Policy BSC3, but also blends the findings of the most recent county-wide Strategic Housing Market Assessment, with our own district-specific levels of in-house data to relate this mix which will best meet local needs.

9.86. The current proposals now include / allow for the affordable housing provision set out above, which would need to be secured through a Section 106 agreement.

#### *Conclusion*

9.87. The current proposal and indicative layout provide an acceptable affordable housing mix and layout and thus accords in this regard with Local Plan Policy BSC4.

#### Flood Risk and drainage

##### *Policy Context*

9.88. 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.

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

##### *Assessment*

9.90. A site-specific Flood Risk Assessment (FRA) prepared BWB Consulting has been submitted in support of the application. The Environment Agency's flood maps indicate that site is not within a higher risk flood zone and are within Flood Zone 1 where residential development is acceptable in principle subject to no increased flood risk elsewhere as a result of proposal.

9.91. Oxfordshire County Council as Local Lead Flood Authority raises an objection to the development on the basis of the attenuation pond being in close proximity to the dwellings to the south on Briggs Close and Balmoral Avenue. Following negotiations with the agent, the attenuation pond has been moved further to the north, an additional small attenuation feature has been created in the north-east of the site, and various other SUDS methods have been added.

9.92. The position of the attenuation pond is now probably too close to proposed development within the site, but it must be borne in mind that the plan is illustrative



and not forming part of the determination of the application. Importantly, the submitted plans demonstrate that the site can be adequately drained and in a safe and sustainable manner. Officers consider that a combination of an attenuation feature and infiltration is considered the most appropriate drainage strategy, which in any case can and would be required by condition of any permission given.

- 9.93. The Drainage Officer has been consulted on the amended drainage proposals but at the time of writing this report has not responded. Their comments will be reported to Planning Committee when received.
- 9.94. Third party comments have raised concerns with regards to the capacity of the sewage system and its ability to cope with additional load as a result of the proposed development. Thames Water, which provides waste water/sewage services, has raised concern regarding an inability of the existing foul water network to accommodate the needs of the development proposal. TW suggests this could be dealt with by an appropriately worded condition; however, further information is required as to what the necessary wastewater network upgrades are in order to ensure the network can accommodate the developments needs and without knowing this the works may not be deliverable. A sewage drainage strategy itself could be secured through an appropriate condition.

#### *Conclusion*

- 9.95. Officers consider that the current proposals can be considered acceptable in terms of flood-risk and drainage, in accord with local and national planning policy in this regard.

#### Ecology Impact

##### *Legislative context*

- 9.96. 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.
- 9.97. 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.
- 9.98. The Regulations provide for the control of potentially damaging operations, whereby consent from the appropriate nature conservation body 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.
- 9.99. 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.

9.100. 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*

9.101. 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.

9.102. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

9.103. 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.

9.104. 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.

9.105. 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.

9.106. 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.

9.107. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities (LPAs) should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

#### *Assessment*

9.108. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it is 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')

9.109. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site contains a number of dilapidated ruined buildings, is on the edge of the built up area of Banbury abutting open countryside and there are a number of mature trees including Priority Habitat Woodland and hedgerows within and adjacent the site, and therefore has the potential to be suitable habitat for bats, breeding birds, badgers, reptiles, great crested newts, water voles and invertebrates.

9.110. In order for the LPA to discharge its legal duty under the Conservation of Habitats and Species Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the LPA should then consider whether Natural England (NE) would be likely to grant a licence for the development. In so doing the LPA has to consider itself whether the development meets the 3 derogation tests listed above.

9.111. 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.

9.112. The application is supported by a detailed protected species survey which concluded that there are bats commuting and foraging round the boundaries of the Site. In addition, the habitats have potential to support other wildlife including

breeding birds and potentially badger. Retained habitats and associated species interest have been buffered from the development footprint and recommendations for their protection during the construction, demolition and management during operation to ensure their long-term retention and enhancement. The report also proposed an ecological mitigation strategy for the scheme. The application proposes to enhance the retained vegetation on site and to put forward additional land within the applicant's ownership as compensation to ensure an overall net gain for biodiversity is achievable on site.

- 9.113. The Council's Ecology Officer ('CE') has offered no objections to the proposals, subject to a number of conditions. The CE has commented that the appropriate surveys have been carried out and the recommendations within the ecological report are acceptable and that currently no protected species licences are required.
- 9.114. The CE has requested conditions relating to a CEMP, LEMP, an additional pre-works badger survey and a full lighting strategy. These conditions are considered to meet the tests set out in Paragraph 55 of the NPPF.
- 9.115. It is therefore considered that the proposed development complies with Policy ESD10 of the CLP 2015 and Government guidance contained within the NPPF and is acceptable in this regard.

### Infrastructure

#### *Policy Context*

- 9.116. New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. National planning policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost, of all or part of the additional infrastructure/service provision that would not have been necessary but for their development. Planning Obligations are the mechanism used to secure these measures.
- 9.117. Policy INF1 of the CLP 2015 states that: "Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities."
- 9.118. Policy BSC11 of the CLP 2015 states that: "Development proposals will be required to contribute to the provision of open space, sport and recreation, together with secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in 'Local Standards of Provision – Outdoor Recreation'. Where this is not possible or appropriate, a financial contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement." Policy BSD12 requires new development to contribute to indoor sport, recreation and community facilities.
- 9.119. The Developer Contributions Supplementary Planning Document (SPD February 2018) sets out its position in respect of requiring financial and on site contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

## *Assessment*

9.120. Where on and off-site infrastructure/measures need to be secured through a planning obligation (i.e. legal agreement) they must meet statutory tests set out in regulation 122 of the Community Infrastructure Ley (CIL) Regulations 2010 (as amended). These tests are that each obligation must be:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development;
- c) Fairly and reasonably related in scale and kind to the development

9.121. Where planning obligations do not meet the above statutory tests, they cannot be taken into account in reaching a decision. In short, these tests exist to ensure that local planning authorities do not seek disproportionate and/or unjustified infrastructure or financial contributions as part of deciding to grant planning permission. Officers have had regard to the statutory tests of planning obligations in considering the application and Members must also have regard to them to ensure that any decision reached is lawful.

9.122. Having regard to the above, in the event that Members were to resolve to grant planning permission, the following items would in officers' view need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts:

### Cherwell District Council

- Provision of 30% affordable housing together with 70/30 tenure split between social rented and shared ownership;
- Provision of public open amenity space and future maintenance arrangements;
- Provision of a LAP together with future maintenance arrangements;
- Maintenance arrangements for on-site trees, hedgerows, and drainage features;
- Payment of a financial contribution towards the provision of refuse/recycling bins for the development;

9.123. Off-site Outdoor Sports Contribution – 49 dwellings x £2,017.03 per dwelling contribution = £98,834.47 towards pitch and pavilion improvements at North Oxfordshire Community use site or the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.

- Off-site Indoor Sports Contribution – 49 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £40,912.39 towards Banbury Indoor Tennis Centre and/or the improvements of leisure centre provision in the locality.
- Community Hall Contribution – 49 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £56,018.74 towards improvements at The Hill or Sunshine Centre in Banbury.

## Oxfordshire County Council

- Highway Works Contribution of £62,772 towards Bridge Street/Cherwell Street eastern corridor improvements and A361 Bloxham Road/Queensway/Springfield Avenue junction improvements;
- Public Transport Service Financial Contribution of £49,000 towards the enhancement of public transport services serving the site by improving the B5 bus service on Bretch Hill by adding additional route options, extended hours and extended weekend hours;
- Public Rights of Way Contribution of £5,000 to provide mitigation measures in the impact area up to 2km from the site to primarily improve the surfaces of all routes as well as new or replacement structures like gates, bridges, seating etc and improved signage and drainage;
- To secure entry into a S278 agreement (Highways Act 1980) to secure mitigation/improvement works, including: a dropped kerb facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill, provision of site access and pedestrian footways as show by a plan agreed by the LHA, improvement of PROW 120/24 into a blacktop footpath connecting the development to Bretch Hill and Balmoral Avenue north / Harlech Close. This could take the form of a self-binding gravel type path suitable for all users, without the need to tarmac.
- Primary education contribution of £269,976 for the expansion of primary capacity serving the Banbury area.
- Secondary education (including sixth form) contribution of £407,462 towards a new secondary school in Banbury.

9.124. Health care contribution of £42,336 to support improvement of local primary care infrastructure if this development were to go ahead, on the basis that primary medical care in Banbury is at capacity, and further housing growth would require additional or expanded infrastructure to be in place.

9.125. CDC's Developer Contributions SPD states that new residential development will be expected to contribute towards the provision of additional health care infrastructure generated by its population growth where there is insufficient existing capacity, well located to serve the development. Whilst the Oxfordshire Clinical Commission Group has been consulted, comments have not been received from this consultee and they have indicated they are only likely to comment on larger applications. Thus, officers do not consider that they can request contributions towards health care infrastructure.

### *Conclusion*

9.126. A number of items need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts. At this stage, no legal agreement has been drafted and therefore the recommendation for the application reflects that the legal agreement must be completed to ensure that the contributions set out above are secured.

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

- 10.1. Section 38(6) of the Planning and Compulsory Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise.
- 10.2. The application proposal seeks consent for up to 49 dwellings on the edge of Banbury, which is considered a sustainable location. Planning policy directs residential development towards Banbury and although the district benefits from a 3 year housing land supply the site has previously been identified for development in the non-statutory local plan. As such, and in light of its location on the edge of Banbury, the principle of development is judged to be acceptable.
- 10.3. The proposed development provides for the retention and upgrading of the public right of way to the northern boundary of the site and subject to conditions / legal agreement would ensuring the upgrade of this footpath to one that is well surfaced, accessible, lit and safe or the provision of a footpath link through to Balmoral Avenue north.
- 10.4. The submitted indicative layout plan demonstrates that 49 dwellings can be satisfactorily delivered on the site in addition to LAP, public open space, etc., and the current proposal and indicative layout provide an acceptable affordable housing mix and layout. Subject to conditions and planning obligations, the proposal is considered acceptable in highway safety terms. The development can be made acceptable in residential amenity terms, both for existing residents neighbouring the site and future occupiers, with acceptable details to be secured at reserved matters stage. Following the receipt of additional/amended information, the proposal is acceptable in terms of flood risk and drainage, and in ecology terms.
- 10.5. The overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The NPPF sets out the economic, social and environmental roles of planning in seeking to achieve sustainable development: contributing to building a strong, responsive and competitive economy; supporting strong, vibrant and healthy communities; and contributing to protecting and enhancing our natural, built and historic environment. The three dimensions of sustainable development must be considered in order to balance the benefits against the harm.
- 10.6. The proposal would deliver additional new housing including affordable housing and significant weight must be attached to this benefit, as well as its contribution towards meeting the need of the Oxfordshire Growth deal. The proposed development would create jobs both directly and indirectly and environmentally it would provide new planting and some enhancements for a range of habitats available for wildlife and the setting of the site.
- 10.7. Through the development of a greenfield site the proposal would have an adverse impact on the character and appearance of the site, its surroundings and the wider landscape setting, albeit that this harm would be limited.
- 10.8. Overall, it is considered that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the Development Plan and the NPPF, and therefore planning permission should be granted.

## 11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE

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

- a) Provision of 30% affordable housing together with 70/30 tenure split between social rented and shared ownership;
- b) Provision of public open amenity space and future maintenance arrangements;
- c) Provision of a LAP together with future maintenance arrangements;
- d) Maintenance arrangements for on-site trees, hedgerows, and drainage features;
- e) Payment of a financial contribution towards the provision of refuse/recycling bins for the development;
- f) Off-site Outdoor Sports Contribution – 49 dwellings x £2,017.03 per dwelling contribution = £98,834.47 towards pitch and pavilion improvements at North Oxfordshire Community use site or the development of a new artificial pitch at Hanwell Fields playing fields in Banbury.
- g) Off-site Indoor Sports Contribution – 49 dwellings x 2.49 avg. people per dwelling x £335.32 per person contribution = £40,912.39 towards Banbury Indoor Tennis Centre and/or the improvements of leisure centre provision in the locality.
- h) Community Hall Contribution – 49 dwellings x 2.49 avg. people per dwelling x £520 contribution per person = £56,018.74 towards improvements at The Hill or Sunshine Centre in Banbury.
- i) Highway Works Contribution of £62,772 towards Bridge Street/Cherwell Street eastern corridor improvements and A361 Bloxham Road/Queensway/Springfield Avenue junction improvements;
- j) Public Transport Service Financial Contribution of £49,000 towards the enhancement of public transport services serving the site by improving the B5 bus service on Bretch Hill by adding additional route options, extended hours and extended weekend hours;
- k) Public Rights of Way Contribution of £5,000 to provide mitigation measures in the impact area up to 2km from the site to primarily improve the surfaces of all routes as well as new or replacement structures like gates, bridges, seating etc and improved signage and drainage;
- l) To secure entry into a S278 agreement (Highways Act 1980) to secure mitigation/improvement works, including: a dropped kerb facility to be provided at the origin of footpath 120/24 where it joins onto Bretch Hill, provision of site access and pedestrian footways as show by a plan agreed by the LHA, improvement of PROW 120/24 into a blacktop footpath connecting the development to Bretch Hill and Balmoral Avenue north / Harlech Close. This could take the form of a self-binding gravel type path suitable for all users, without the need to tarmac.
- m) Primary education contribution of £269,976 for the expansion of primary capacity serving the Banbury area.



n) Secondary education (including sixth form) contribution of £407,462 towards a new secondary school in Banbury.

## CONDITIONS

### **Reserved Matters Time Limit**

1. No development shall commence until full details of the layout (including the layout of the internal access roads and footpaths), scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. In the case of the reserved matters, the final application for approval shall be made not later than the expiration of three years beginning with the date of this permission.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

### **Compliance with Plans**

4. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: PA/104 (Site Location Plan), PA/101 Rev B (Illustrative Site Layout), 19\_106\_01D (Illustrative Landscape Masterplan), 20496-04 (Site Layout Refuse Vehicle Tracking) and BAB-BWB-ZZ-XX-DR-CD-0004\_S2-P2 (Amended Drainage Strategy).

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

5. No development shall take place until details of all finished floor levels in relation to existing and proposed site levels and to the adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be constructed strictly in accordance with the approved levels.

Reason: To secure an acceptable standard of development that safeguards the visual amenities of the area and the living conditions of existing and future occupiers and to ensure compliance with Policy ESD15 of the Cherwell Local

Plan 2011-2031 Part 1 and government guidance within Section 12 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

6. No part of the development hereby permitted shall take place until a desk study and site walk over to identify all potential contaminative uses on site and to inform the conceptual site model has been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and has been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

7. If a potential risk from contamination is identified as a result of the work carried out under condition 6, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

8. If contamination is found by undertaking the work carried out under condition 7, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

9. If remedial works have been identified in condition 8, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 8. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

10. Notwithstanding the details submitted, development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, and which shall be in general accordance with drawing BAB-BWB-ZZ-XX-DR-CD-0004\_S2-P2 (Amended Drainage Strategy), has been submitted to and approved in writing by the local planning authority. The scheme shall not be implemented other than in accordance with the approved details and shall be implemented before the development is completed. The scheme shall also include:

- Discharge Rates
- Discharge Volumes
- SUDS (Permeable Paving, Soakaway Tanks)
- Maintenance and management of SUDS features (To include provision of a SuDS Management and Maintenance Plan)
  - Infiltration in accordance with BRE365
  - Detailed drainage layout with pipe numbers
  - Network drainage calculations
  - Phasing
  - Flood Flow Routing in exceedance conditions (To include provision of a flood exceedance route plan)

Reason: To ensure that sufficient capacity is made available to accommodate the new development and in order to avoid adverse environmental impact upon the community and to ensure compliance with Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

11. Prior to the commencement of the development hereby approved, full details of the improvements to footpath 120/24 including, position, layout, construction, drainage, vision splays and a timetable for the delivery of the improvements shall be submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in accordance with the approved details and shall be provided prior to the first occupation of the development and shall be retained as such thereafter.

Reason - In the interests of highway safety and public amenity and sustainable development and to comply with Policies ESD1, ESD15 and Banbury 10 and Government guidance contained within the National Planning Policy Framework.

12. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to first

occupation the means of access shall be constructed and retained in accordance with the approved details.

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

13. Prior to commencement of the development hereby approved; a construction traffic management plan shall be submitted to and approved by the Local Planning Authority. The CTMP will need to incorporate the following in detail and throughout development the approved plan must be adhered to
- The CTMP must be appropriately titled, include the site and planning permission number.
  - Routing of construction traffic and delivery vehicles is required to be shown and signed appropriately to the necessary standards/requirements. This includes means of access into the site.
  - Details of and approval of any road closures needed during construction.
  - Details of and approval of any traffic management needed during construction.
  - Details of wheel cleaning/wash facilities – to prevent mud etc, in vehicle tyres/wheels, from migrating onto adjacent highway.
  - Details of appropriate signing, to accord with the necessary standards/requirements, for pedestrians during construction works, including any footpath diversions.
  - The erection and maintenance of security hoarding / scaffolding if required.
  - A regime to inspect and maintain all signing, barriers etc.
  - Contact details of the Project Manager and Site Supervisor responsible for onsite works to be provided.
  - The use of appropriately trained, qualified and certificated banksmen for guiding vehicles/unloading etc.
  - No unnecessary parking of site related vehicles (worker transport etc) in the vicinity – details of where these will be parked and occupiers transported to/from site to be submitted for consideration and approval. Areas to be shown on a plan not less than 1:500.
  - Layout plan of the site that shows structures, roads, site storage, compound, pedestrian routes etc.
  - A before-work commencement highway condition survey and agreement with a representative of the Highways Depot – contact 0845 310 1111. Final correspondence is required to be submitted.
  - Local residents to be kept informed of significant deliveries and liaised with through the project. Contact details for person to whom issues should be raised with in first instance to be provided and a record kept of these and subsequent resolution.
  - Any temporary access arrangements to be agreed with and approved by Highways Depot.
  - Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours.

Reason: In the interests of highway safety and to mitigate the impact of construction vehicles on the surrounding highway network, road infrastructure and local residents, particularly at morning and afternoon peak traffic times

14. Prior to commencement of the development hereby approved, a Construction Environment and Traffic Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved CEMP.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained

within the National Planning Policy Framework.

15. Prior to the commencement of any works associated with the construction of a dwelling, details of the means by which all dwellings will be designed and constructed to achieve an energy performance standard equivalent to a 19% improvement in carbon reductions on 2013 Part L of the Building Regulations (unless a different standard is agreed with the local planning authority) shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and no dwelling shall be occupied until it has been constructed in accordance with the approved energy performance measures.

Reason - In the interests of environmental sustainability in construction in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance in the National Planning Policy Framework.

16. Prior to the commencement of the development hereby approved including any demolition, and any works of site clearance, and as part of any reserved matters application for layout and landscaping, a method statement and scheme for enhancing biodiversity on site such that an overall net gain for biodiversity is achieved, to include details of enhancement features and habitats both within green spaces and integrated within the built environment, shall be submitted to and approved in writing by the Local Planning Authority. This shall also include a timetable for provision. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

Reason: To ensure the development provides a net gain in biodiversity in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

NOTE TO APPLICANT/DEVELOPER: It is advised that this condition include a Biodiversity Impact Assessment metric to show how a clear net gain for biodiversity will be achieved.

17. Prior to the commencement of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved LEMP.

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

18. Prior to the installation of any external lighting a full lighting strategy to include illustration of proposed light spill and which adheres to best practice guidance, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved document.

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

19. No properties shall be occupied until approval has been given in writing by the

Local Planning Authority that either:

- Evidence to demonstrate that all water network upgrades required to accommodate the additional flows/demand from the development have been completed; or
- a housing and infrastructure phasing plan has been agreed with Thames Water and the Local Planning Authority in writing to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

Reason - The development may lead to no / low water pressure and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development.

20. Prior to first occupation the development a Travel Information Pack shall be submitted to and approved by the Local Planning Authority. Thereafter the first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

Reason: To ensure all residents and employees are aware from the outset of the travel choices available to them, and to comply with Government guidance contained within the National Planning Policy Framework.

21. No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres person/day and shall continue to accord with such a limit thereafter.

Reason - In the interests of sustainability in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

22. The development hereby approved shall be carried out strictly in accordance with the recommendations set out in sections 5.5-5.50 of the Ecological Appraisal carried out by EDP dated June 2020 unless otherwise agreed in writing by the Local Planning Authority.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

23. Each dwelling shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure to serve that dwelling prior to its first occupation.

Reason - To maximise opportunities for sustainable transport in accordance with Government guidance contained within the National Planning Policy Framework