

Case Officer: Samantha Taylor

Applicant: The Light Cinemas

Proposal: CQ2 Block B Terrace Area - Erection of enclosure area including full height glazed windows and retractable fabric roof and two green wall features

Ward: Banbury Cross and Neithrop

Councillors: Councillor Banfield, Councillor Hodgson and Councillor Perry

Reason for Referral: Application affects Council's own land

Expiry Date: 2 February 2022

Committee Date: 13 January 2022

SUMMARY OF RECOMMENDATION: GRANT PERMISSION

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located within Banbury town centre, forming part of the Castle Quay 2 development, which is currently under construction. The application relates to the Cinema (Block 2), specifically the first floor terrace area.

2. CONSTRAINTS

- 2.1. The application site is within flood zones 2 and 3 alongside the Oxford Canal, lies within the Oxford Canal Conservation Area and in the Spiceball Development Area.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The application seeks full planning permission for the provision of an enclosure across about half of the approved terrace to effectively extend the cinema's café/restaurant area, to erect two green walls to the currently under construction cinema block, alongside the external staircase entrance, and to erect an external cinema screen on the back wall of the cinema block facing out across the retained part of the terrace of the Castle Quay 2 development.
- 3.2. Castle Quay 2 consists of 3 mixed-use blocks, a hotel, cinema/leisure facility and supermarket. The development on site has commenced and is substantially constructed with the supermarket having opened.

4. RELEVANT PLANNING HISTORY

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

21/01407/OUT

Amendment to the Approved Plans (Condition 4) and Removal of condition 24 (use of units) of 16/02366/OUT.

Approved

19/02937/CDC

New access stair from cinema roof terrace

Approved

17/00284/REM

Reserved Matters Application to 16/02366/OUT across the whole development site is sought. Application for approval of reserved matters for scale, layout, appearance, materials and landscaping.

Approved

16/02366/OUT

Removal/ Variation of conditions 4 (list of approved drawings) and 9 (enhancement of River Cherwell) to 13/01601/OUT - Condition 4 to be varied to reflect alterations in the access and servicing strategy for Block C, with variations to maximum deviations in block and Condition 9 to be removed as no longer justified.

Approved

13/01601/OUT

Outline planning permission for the redevelopment of land adjacent to the Oxford Canal comprising; the demolition of the Castle Quay Shopping Centre northern car park and the General Foods Sports and Social Club; change of use of part of the ground floor of the Castle Quay Shopping Centre southern car park and associated works; the erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road.

Approved.

5. PRE-APPLICATION DISCUSSIONS

- 5.1. Discussions have taken place on whether the proposed development would constitute a non-material amendment to the earlier applications. Given the scale and permanence of the enclosure creating new floorspace and its prominence in the street scene, the Council advised that the proposed works required full planning permission.

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 **31 December 2021**.
- 6.2. At the time of writing, no third-party comments had been received.

7. RESPONSE TO CONSULTATION

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

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BANBURY TOWN COUNCIL: **No objections** to the application.

CONSULTEES

7.3. OCC HIGHWAYS: **No objections** to the application. The proposals are unlikely to have any adverse impact on the local highway network in traffic and safety terms.

7.4. CDC ENVIRONMENTAL PROTECTION: **No comments** on the application.

7.5. CDC BUILDING CONTROL: Commented that the louvres on the external wall of the cinema block and in proximity to the external stair, appeared at the time of writing, to be of a timber material and may hence need to be treated to ensure they have low combustibility. It is assumed that there are two safe alternative escape routes from the proposed terrace are, i.e., through the café area and via the external stair.

Officer Comment: The assumption made in respect to two alternative safe escape routes is correct. In respect to the louvres, they do not form part of this application. They have in fact already been permitted and conditioned under reserved matters and materials discharge planning permissions 17/00284/REM and 20/01203/DISC, dated 26 September 2018 and 22 July 2020, respectively.

8. RELEVANT PLANNING POLICY AND GUIDANCE

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

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

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- BANBURY 9 – Spiceball Development Area
- ESD15 - The Character of the Built and Historic Environment ESD16 – Protection and enhancement of the Oxford Canal corridor

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C29 – Appearance of development adjacent to the Oxford Canal

8.3. Other Material Planning Considerations:

- National Planning Policy Framework (NPPF) 2021
- Planning Practice Guidance (PPG)

9. APPRAISAL

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

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

- Heritage impact
- Traffic and Highways

Principle of Development

- 9.2. The application seeks to provide an enclosure to part of the outdoor terrace area of the Cinema Block, the provision of two green walls beside the external staircase and the erection of an external cinema screen on the back wall of the cinema to be viewed from the terrace. The enclosure to the terrace would consist of a permanent structure with fixed glazing to the sides and a retractable roof. Whilst it is noted the roof is retractable, given the scale of the enclosure to 200m² of floorspace, and the permanence of the max 4m-high supporting structure with fixed glazing, Officers consider the proposal would essentially result in an extension to the cinema. The enclosed outdoor terrace would create additional floorspace to be used as an extended café/restaurant/bar area. The remaining unenclosed area of terrace would provide space used for ad-hoc outdoor cinema screenings.
- 9.3. The principle of providing leisure-based development in this location has been established through the grant of planning permission for the mixed use Castle Quay 2 scheme and Policy Banbury 9 Spiceball Development Area of the Cherwell Local Plan 2031. Much of the development is constructed with some aspects of the wider scheme having been occupied. As such the principle of providing leisure space has been established. The enclosure of a portion of the terrace area within a structure that extends the cinema remains supportive of the approved uses is considered compatible with the approved and surrounding uses.
- 9.4. Specifically, plans that have been approved as part of the earlier applications for the wider development scheme have included reference to the use of the terrace for an ad-hoc outdoor cinema and a lightweight roof structure on the terrace. This has established the principle of using the outdoor terrace on an irregular basis. However, the current proposal is for a permanent structure which is not considered to be lightweight and would allow the continued use of the outdoor terrace for leisure purpose, resulting in an extension to the building.

Design and Impact on the Character of the Area

- 9.5. Policy ESD15 of the Cherwell Local Plan seeks to ensure that developments are of an appropriate design, which is compatible with the local context in which they are situated.
- 9.6. The development seeks to construct full height glazed structure with retractable canopy. Previous applications have included a lightweight roof structure (pergola). However, the current design seeks planning permission for full height guillotine windows with a retractable fabric roof to create an enclosed indoor space, maximising the use of the space in all weathers.
- 9.7. The use of glazing and steel would complement the approved glazing balustrades, help to break up the large brick wall elevations whilst ensuring that the active frontage on to the canal remains.
- 9.8. In addition, previous approved designs have included the provision of a steel frame to accommodate an outdoor cinema screen. However, the applicant has amended the layout of the cinema terrace such that cinema screenings will be projected from an external screen on an existing rear wall of the cinema block. This element does not require planning permission. However, given the progress on construction, the steel frame has been constructed. As such, the current application seeks to erect green walls to the frame, and extending alongside the external stair with various plantings and timber cladding. The green walls suspended from the metal frames and

additional plantings and sections of timber cladding will all help to soften and break up the somewhat harsh appearance of the brick walls, thereby improving the design appearance of this part of the structure, in accordance with saved policy C29 in the 1996 Local Plan and ESD16 of the CLP 2031 Part 1.

Heritage Impact

- 9.9. The application site lies within the Oxford Canal Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*
- 9.10. Conservation Areas and Listed Buildings are designated heritage assets, and Paragraph 199 of the NPPF states that: *when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* Policy ESD15 of the CLP 2031 Part 1 echoes this guidance.
- 9.11. The application site forms part of the Block B Cinema outdoor terrace, which is currently under construction at the Castle Quay 2 development. The earlier grant of consents for a large-scale mixed-use development was considered to result in less than substantial harm to the significance of the Conservation Area that was outweighed by the public benefits of the scheme.
- 9.12. It is acknowledged that there has been substantial change within the Oxford Canal Conservation Area as a result of the Castle Quay 2 development. However, this has also increased the usage of this area, which is considered to be of public benefit, increasing the understanding of the history of the wider site. The application proposes to construct an enclosure to the terrace and provide 2 green walls.
- 9.13. This would serve as an attraction to the public, with vantage points from the first floor terrace over the canal. The materials to be used include large areas of metal and glazing, which are materials recommended by the earlier Conservation Officer when considering the earlier application and have been introduced where possible in the wider development. As such, the materials to be used are considered to be compatible with the Castle Quay 2 development and the Conservation Area and would serve to improve the overall appearance of the Cinema Block when viewed from the canal and road bridge, in accordance with saved policy C29 in the 1996 Local Plan and policies ESD15 and ESD16 of the CLP 2031 Part 1.
- 9.14. Whilst there may be some less than substantial harm arising from the provision of the enclosed terrace and green walls, this is considered to be limited given the context in which the development sits, as part of the wider Castle Quay development and would represent an improvement on the approved elevational appearance. The public benefits of providing an additional leisure attraction is considered to outweigh any less than substantial harm caused to the significance of the Conservation Area.
- 9.15. Overall, the proposal is considered to comply with both National and Local Planning policies in respect of the impact the proposal would have on the significance of the Oxford Canal Conservation Area.

Traffic and Highways

- 9.16. Policy SLE4 of the CLP 2031 Part 1 seeks to ensure that development proposals are acceptable for the local highway network and do not have a severe traffic impact.
- 9.17. The Oxfordshire County Council Officer has confirmed that they have no objections to the proposed development as it is unlikely that the proposals would have any impact to the local highway network in safety and traffic terms.
- 9.18. As such, the proposal is considered to comply with Policy SLE4 of the CLP 2031 Part 1.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. Subject to the confirmation of the acceptability of highway safety aspect, Officers consider the proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

11. RECOMMENDATION

RECOMMENDATION – GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW

CONDITIONS

Time Limit

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Compliance with Plans

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following Plans and documents:

Terrace boundary plan	1049-LDA-B0-02-DR-A-08001
Existing Terrace Floor Plan	1049-LDA-B0-02-DR-A-08050
Proposed Terrace Floor Plan	1049-LDA-B0-02-DR-A-08002
Green Wall Feature	1049-LDA-B0-02-DR-A-08006
Terrace Roof Plan	1049-LDA-B0-XX-DR-A-08003
Existing Terrace Sections	1049-LDA-B0-02-DR-A-08052
Proposed Terrace Sections	1049-LDA-B0-XX-DR-A-08004
Existing Terrace Elevations	1049-LDA-B0-02-DR-A-08051
Proposed Terrace Elevations	1049-LDA-B0-XX-DR-A-08005
View 1	1049-LDA-B0-XX-DR-A-08010
View 2	1049-LDA-B0-XX-DR-A-08011
View 3	1049-LDA-B0-XX-DR-A-08012
View 4	1049-LDA-B0-XX-DR-A-08013

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.