

Case Officer: David Lowin

Applicant: Lone Star Land Limited

Proposal: Erection of up to 49 dwellings, associated open space, sustainable urban drainage systems, and access from Balmoral Avenue

Ward: Banbury Calthorpe and Easington

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

Reason for Referral: Major development/Significant departure from adopted development plan.

Expiry Date: 28 February 2022

Committee Date: 10 February 2022

SUMMARY OF RECOMMENDATION: DELEGATE POWERS TO GRANT PERMISSION, SUBJECT TO: NO OBJECTIONS FROM THE COUNTY ARCHAEOLOGIST; CONDITIONS; AND THE COMPLETION OF A SECTION 106 AGREEMENT

1. APPLICATION SITE AND LOCALITY

- 1.1. The site comprises 3.11 hectares. Arable farmland lies to the north west, west and south of the site. Residential development lies to the north (Thornbury Rise) and a residential development to the east of the site has been granted planning permission at appeal (reference 20/01643/OUT). A public right of way crosses the site along the northern boundary (code:120/24/10). Broughton Road bounds the southernmost part of the site.
- 1.2. The land proposed for the residential development, some 1.45 Ha is currently in agricultural use and situated at the Northeast corner of the site which at the present time is in arable use. The site area is classified as Grade 3b agricultural land which is considered of moderate quality. There are some redundant agricultural buildings near the south-eastern boundary of the site.
- 1.3. The boundaries on all sides of the site proposed for residential development are comprised of mature trees and hedgerow.
- 1.4. The site does not lie within or close to any statutory ecological designations, such as a SAC or SSSI. The site does not form part of a statutory landscape designation.
- 1.5. The site does not lie within or near to a Conservation area, nor are there any listed buildings present on site. The closest listed building is Withycombe Farmhouse which is Grade II listed. However, this is circa 350 metres away and separated from the site by tree planting and residential development.
- 1.6. According to Environment Agency mapping the site lies within Flood Zone 1, which is the lowest risk for river flooding.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The planning application seeks outline planning permission for residential development with all matters reserved except for access. A full description of development is below:

'Erection of up to 49 dwellings, associated open space, sustainable urban drainage systems, and access from Balmoral Avenue.

2.2. The proposal comprises the following elements:

- Erection of up to 49 dwellings.
- Up to 30% affordable housing (in the form of 1 bed maisonettes, 1 and 2 bed apartments, and 1, 2, 3 and 4 bed houses);
- Access via Balmoral Avenue through the consented scheme to the east.
- Pedestrian connection to PROW to the north.
- Public open space.
- A Local Area of Play (LAP) in the northern part of the site.
- Additional landscaping.
- Sustainable urban drainage systems; and
- Other supporting infrastructure.'

2.3. 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.

2.4. The application is made in outline therefore appearance, landscaping, layout and scale are to be considered through reserved matters applications. Access is proposed for consideration in detail at this stage. An illustrative masterplan has been produced to show one way that the development could be satisfactorily developed.

2.5 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, land contamination report, Air Quality report, Bat report, Utilities assessment, Drainage statement, Tree Report, Transport Statement, Archaeology and Heritage assessment and a Landscape and Visual Impact Assessment. This latter document is the subject of an external audit report by consultants acting for CDC.

3. RELEVANT PLANNING HISTORY

3.1. There is no planning history for the application site, however the planning history of the land to the immediate east of the site is significant, culminating in the approval of a residential development at appeal (reference 20/01643/OUT).

3.2. A residential development for 49 dwellings on an unallocated site in the open countryside land to the east of the site was granted outline planning permission at appeal on 1 June 2021. That development is for the erection of 49 homes, public open

space and other infrastructure. The appeal reference is APP/C3105/W/21/327109, and the planning application reference is 20/01643/OUT.

3.3. The Inspector found that:

“The proposed development of up to 49 houses is required to contribute to the supply of housing in the District and the social and other impacts of the development are mitigated by planning obligations. The contribution to housing supply is a significant benefit and is not outweighed by any adverse impacts. Planning permission has thus been granted for the erection of up to 49 homes, public open space, and other infrastructure”

4. PRE-APPLICATION DISCUSSIONS

4.1. The following pre-application discussions have taken place last year about this proposal under reference 21/02152/PREAPP and the written response by officers is set out below:

Principle of Development & Development Plan compliance:

Turning first to the matter of the principal of the submitted scheme, as revised (from 120 dwellings on four fields down to just 40 dwellings on one field), the site lies beyond the developed edge of the urban settlement of Banbury, in open countryside, where development that does not form part of an adopted Development Plan is contrary to policy contained in the current development plan. However, the lack of a five-year land supply in CDC does engage the ‘tilted ‘balance provisions of the NPPF. This tilted balance, as has been demonstrated in a 2021 High Court decision known as the Gladman case, does not set aside the requirement for new development to, as a starting point, comply with policies in an adopted Development Plan, in this case the Cherwell Local Plan 2011-2031 and saved policy in an earlier 1996 Local Plan.

The lack of a five-year land supply is a relevant positive factor in the planning balance in judgements on the site’s potential suitability for development. Together with the fact that the site, as revised, is sustainably located in respect to sustainable transport modes, would provide positive economic effects by virtue of construction jobs, and would provide necessary housing, including a policy compliant percentage of affordable dwellings. The revised smaller site proposal is likely, though specific details have yet to be submitted, to provide sufficient land for bio-diversity net gain to be achieved. In addition, the revised site is likely to be able to provide an acceptable sustainable urban drainage solution for any development

The reduced size site would also sit alongside recently permitted development accessed from Balmoral Drive, which would afford likely acceptable access to the appraisal site.

The site, once detailed proposals have been drawn up, would likely have no material detriment to archaeological interests, other heritage assets or ecological habitats.

Highway Access & Safety

Whilst the Highway Authority may have expressed a preference for the revised site to be accessed directly from Broughton Road, access from the adjoining land to the East, the subject of a successful appeal for residential use, the access arrangements shown on the revised plan via Balmoral Drive and that appeal site, are likely not to cause such severe highway safety issues that an objection from the Highway authority could be sustained.

Residential & Visual Amenities

In terms of residential and visual amenity, the site is not currently bordered by any existing homes and any proposal coming forward is unlikely to be constrained by that issue. The site as revised is enclosed by significant field edge planting of trees and

hedges such that the visual amenity of the area is not materially impacted. However, the necessary landscape visual impact report needed to support any application that maybe forthcoming would provide further evidence on this matter.

Landscape Impact

The other principal issue as aside from noncompliance with development plan policy is the effect of the proposal on the landscape. The initial submission for 120 dwellings across four fields, when viewed from the southern side of Broughton Road, in the company of the developer and agents from the crest of the valley at Crouch Hill, along which at the bottom runs Broughton Road, the impact of developing all four fields would in my considered opinion be detrimental to this rural gateway entrance to Banbury and to landscape policy in the adopted Plan.

The result of this view was transmitted to the applicants together with the appeal decision of the Inspector with respect to the land lying below Crouch Hill, application 13/01758/OUT where landscape considerations played a significant role in the eventual dismissal. As a result, the revised plan for just 40 dwellings on one field immediately alongside the recent appeal success site, was then submitted and forms the basis of this Pre-app report.

The revised plan limits the proposed development to the North West corner of the original submission. The effect on the landscape of this revision is obviously markedly reduced, such that the submission of an application with an attached landscape and visual impact assessment, may well be able to demonstrate that the likely landscape impacts on this gateway location would be negligible and that the reduced scale of development now proposed would be broadly acceptable. However, until such detailed evidence is available, a final judgement is impossible to definitively arrive at.

Conclusion

The scheme is contrary to current development policy, being a proposal for residential development in open countryside where such proposals are normally resisted unless supported by adopted policy or emerging policy with some weight. However, the fact that the Council does not presently have a five-year land supply is a material consideration that engages the NPPF tilted balance. The site is a reasonably sustainable location with no currently significant material detrimental impacts identified that potentially could not be dealt with by way of detailed site layout design. This weighs in favour of the proposal.

As stated above the Council will in the first instance seek to determine applications in accordance with development plan policy. However, if the applicant considers the positive material factors that have been identified, could, with sufficient and necessary further evidence outweighs the negative policy position, then the necessary planning balance consideration could potentially find favourable officer support for the reduced scale scheme of 40 dwellings.

5. RESPONSE TO PUBLICITY

- 5.1. 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 **6 January 2022**.
- 5.2. The comments raised by third parties are summarised as follows:
 - The site is not allocated for development in the adopted local plan
 - There is no need for the development
 - That the access via Balmoral Drive is unsuitable.
 - Unresolved archaeological issues.

- Lack of school places

5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register

6. RESPONSE TO CONSULTATION

6.1. 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

Banbury Town Council: **No Objections** – *“in light of CDC’s lack of a 5 year land supply for housing, and the recent appeal result on adjacent land, that Banbury Town Council do not object to this proposal, although without such factors they would consider that approval of the proposal would be premature pending the completion of the review of Cherwell Local Plan”*

CONSULTEES

6.2. OCC HIGHWAYS: **No objections** subject to standard conditions in respect of width of the access, surfacing, drainage and visibility splays and the completion of a section 106 agreement including contribution to enhanced public transport provision and PROW.

6.3. CDC Environmental Protection: **No objections**, subject to standard conditions requiring a Construction Environmental Management Plan (CEMP).

6.4. CDC Recreation and leisure: **No objection** subject to contributions as set out in summary in the heads of Terms of the S106 in the final section of this report.

6.5. Lead Local Flood Authority: **No objections** subject to standard conditions.

6.6. OCC Archaeology OCC: **Objection**, notwithstanding the submitted desk-based study a programme of archaeological investigation is required ahead of the determination of any planning application for the site. This investigation must be undertaken in line with the Chartered Institute for Archaeologists standards and guidance for archaeological evaluation including the submission and agreement of a suitable written scheme of investigation.

(Currently on-site trial trenching is being undertaken as required in response to the archaeological consultation response and is expected to be completed prior to the committee considering this application. The written report of this work will be submitted to the County Archaeologist for comment and approval prior to determination and the officer recommendation reflects this position)

6.7. OCC Group (NHS) **No objection** subject to appropriate financial contribution to healthcare provision.

6.8. CDC Ecology **No objection** subject to a CEMP condition. Satisfied that the applicants have carried out a biodiversity impact assessment (BIA) as part of their submitted ecology appraisal using a metric which demonstrates a 10% net gain for biodiversity is achievable on site within the current illustrative layout.

6.9. The findings of the external consultant's audit on the applicants submitted landscape visual infrastructure (LVIA) assessment is **no objection** to the proposed development

finding it to be acceptable in LVIA impact terms following a review of the applicant's submitted LVIA and a post review site visit.

6.10. CDC Arboriculturist: **No objections** subject to the imposition of conditions

6.11. CDC Planning Policy: **Objection**, subject to landscape advice:

- As the Council cannot demonstrate a five-year housing land supply, in accordance with the NPPF, any assessment of the residential proposals will need to apply the 'tilted balance'
- The 'tilted balance' states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- However, recent case law has clarified that even where development plan policies are rendered "out of date" by housing land shortfalls, they remain "potentially relevant" to the application of the tilted balance and decision makers are "not legally bound to disregard them".
- Moreover, case law has established that the provisions of the NPPF remain subordinate to the overriding principle established by section 38(6) of the Planning and Compulsory Purchase Act 2004 that decision-makers must have first regard to the terms of development plan policies.
- The merits of providing additional homes (including affordable homes) on this site is noted and the proposal would assist in delivering new homes and meeting overall Policy BSC 1 housing requirements to 2031.
- Policy BSC 3 states that sites of 11 or more dwellings will be required to provide affordable housing. In Banbury the policy requirement is that 30% of the developed units should be for affordable housing. Advice should be sought from the Housing Strategy and Development Team as to the mix of affordable unit types and Policy BSC 4 will apply.
- The application site, if developed, will extend the current built up limits of Banbury into open countryside. The site is not allocated for development in the development plan. The proposals are therefore contrary to saved policies C8 and H18.
- Policy ESD 13 requires development to respect and enhance local landscape character. Proposals will not be permitted if they would, inter alia cause undue visual intrusion into open countryside, cause undue harm to important natural landscape features and topography, or be inconsistent with local character.
- Paragraph B.252 of the Plan lists key landscape, and landform features of value around Banbury which includes ironstone ridges and valleys; and Crouch Hill: an important landmark overlooking Banbury and the surrounding area.
- In assessing the proposals against the requirements of Policy ESD 13 the following published documents are relevant and material considerations.
- The application site is included within the Council's Housing and Economic Land Availability Assessment (HELAA) dated February 2018 (part of Site Reference HELAA 035). In assessing this application site in the context of a wider site, it concludes: *'The remainder of the site is considered unsuitable for development as it lies in the open countryside surrounded by farmland and forms an attractive landscape setting to the approach to Banbury from the west'*.
- The Banbury Landscape Sensitivity and Capacity Assessment (September 2013) undertaken to inform the 2015 adopted Cherwell Local Plan considered this site in the context of a larger site, much of which was subsequently allocated for residential development under Policy Banbury 3 of the 2015 adopted Local

Plan. The LCSCA states at para 4.9.11 *'In the south of the site, south of Withycombe Farm, the landscape becomes more intimate comprising smaller fields that are enclosed by hedgerows and hedgerow trees; these features are important to the setting of Withycombe Farm. The overall aesthetic quality of the site is medium...'*

- Paragraph 4.9.26 continues by stating *'....Residential development to the south of Withycombe Farm would not be appropriate as this would not be in keeping with the small scale valley along Broughton Road on the approach to Banbury.'*
- It is noted that the LVIA submitted in support of the application indicates that the site will be visible from the Broughton Road, when approaching from the west. The LVIA also states that the site will be visible from Crouch Hill, which the local plan identifies as an important local landscape feature. The photograph on page 22 would indicate that the development will clearly be visible as an extension into open countryside.
- It is noted that although residential development is not proposed in the fields adjacent to Broughton Road, extensive engineering operations are. The impact of these engineering operations on the landscape character of the locality should also be assessed.
- Detailed landscape advice should therefore be sought to fully assess the impact of the proposals and hence conformity of the proposals with the requirements of Policy ESD 13.
- The proposal exceeds the threshold which requires open space provision to be provided on site and due regard should be given to the requirements of Policy BSC 11.
- Proposals should be considered against and informed by Policy ESD 15 and consider matters such as public access, routes, views, urban spaces, development frontage, and building heights.
- The relationship of the development to the existing settlement pattern and connectivity to existing services and facilities will also need to be considered.
- Technical matters including access, traffic, biodiversity and ecology will require detailed consideration Advice should be sought from the County Council and relevant Council departments in this regard.
- The Council is currently working on the review of the adopted Cherwell Local Plan 2011-2031 (Part 1) which will cover the period to 2040. This plan is the more appropriate context for the detailed consideration of this site for residential development. The application site has been submitted for consideration through the Local Plan Review 'Call for Sites'.

6.12. Housing Strategy CDC: **No objection** subject to S106 agreement

6.13. Thames Valley Police: **Objection** to illustrative layout due to defensible space in some areas being deficient.

7. RELEVANT PLANNING POLICY AND GUIDANCE

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

7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council in 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)

Policy SLE 4: Improved Transport & Connections

Policy BSC 1: District Wide Housing Distribution

Policy BSC 3: Affordable Housing

Policy BSC 4: Housing Mix

Policy BSC 10: Open space, Outdoor Sport & Recreation Provision

Policy BSC 11: Local standards of Provision – Outdoor Recreation

Policy BSC 12: Indoor Sport, Recreation & Community Facilities

Policies ESD 1 – 3 Mitigating & Adapting to Climate Change

Policy ESD 7: Sustainable Drainage Systems

Policy ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment

Policy ESD 13: Local Landscape Protection & Enhancement

Policy ESD 15: The Character of the Built and Historic Environment

Policy ESD 17: Green Infrastructure

Policy H18: New dwellings in the countryside

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

Policy C8: Sporadic development in the open countryside

Policy C28: Layout, design and external appearance of new development

Policy C30: Design control

Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Cherwell Residential Guide SPD (2018)

8. APPRAISAL

8.1. 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
- Ecology impact
- Highways
- Rights of way, access and pedestrian connectivity

- Residential amenity
- Affordable housing
- Flood risk and drainage
- Infrastructure

Principle of Development

Policy Context

- 8.2. 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 but cannot demonstrate a 5 year housing land supply, a matter identified in the Inspector's report relating to the adjoining site. The current monitoring report shows a 3.8 year housing land supply. However, the NPPF is a significant material consideration.

NPPF

- 8.3. 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

- 8.4. The Development Plan comprises the saved policies of the 1996 adopted Cherwell Local Plan (CLP1996) and the 2015 adopted Cherwell Local Plan (CLP 2031 Part 1). The policies important for determining this application are referenced above.
- 8.5. Policy PSD1 of the Cherwell Local Plan 2011-2031 accords with the NPPF's requirement for sustainable development and that planning applications that accord with policies in the statutory Development Plan will be approved without delay.
- 8.6. The Cherwell Local Plan 2011-2031 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. However, notwithstanding that CDC has an adopted Development Plan the lack of a five year housing land supply requires the 'tilted balance' to be engaged in accordance with the NPPF guidance set out above.

Assessment

- 8.7. The Council's 2021 Annual Monitoring Report (AMR) confirms that the District cannot demonstrate a 5 year housing land supply. In the circumstances that an 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 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.

- 8.8. In terms of the three legs of sustainability as defined in the NPPF, the economic impact of, the proposed development would create jobs both directly and indirectly. Socially, the development would provide needed market and affordable housing whilst environmentally it would provide new planting and some enhancements for a range of habitats available for wildlife and the setting of the site. It is considered that the proposed development fulfils the requirements of paragraph 8 of the Framework and can be considered to be sustainable. However, these aspects are explored in greater detail through the coming paragraphs.

Conclusion

- 8.8. The proposal as submitted is considered by officers having regard to the consultation responses and the analysis of the relevant issues identified above and analysed below to be sustainable development notwithstanding the fact that the development falls contrary to the Development Plan

Site Layout and Design

Policy Context

- 8.9. 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.
- 8.10. Policy BSC10 of the Cherwell Local Plan Part 1 2011-2031 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.

Assessment

- 8.11. The application is submitted in outline with a site plan submitted for illustrative purposes. 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 to and taking access from existing approved 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.
- 8.12. The proposed landscaping, with retention of the existing tree lined boundaries, woodland provide a softer edge to the proposed development allowing for a transition to the rural landscape to the west. The effect of the development on the landscape is considered later in the appraisal.
- 8.13. 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.

Conclusion

- 8.14. It is considered that while the submitted indicative layout is generally acceptable, with, 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.

Design, and impact on the character and appearance of the area

Legislative and policy context

- 8.15. 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.
- 8.16. Paragraph 130 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.
- 8.17. Policy ESD15 of the Adopted Local Plan Part 1 states that 'new development proposals should:
- Contribute positively to an area's character and identity by creating or reinforcing distinctiveness and respecting local topography, including skylines, valley floors , significant trees, historic boundaries , landmarks, features or views.
 - Respect the traditional pattern routes, spaces, blocks, enclosures and (inter alia) create clearly defined active public frontages.'
- 8.18. Policy ESD13 of the Cherwell Local Plan Part 1 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.”
- 8.19. Saved Policy C28 of the Cherwell Local Plan 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.
- 8.20. Saved Policy C33 states the Council will seek to retain any undeveloped gap which is important in preserving the character of a loose knit settlement structure or maintaining the setting of heritage assets.
- 8.21. The Cherwell Residential Guide SPD (2018) builds on the above policies and provides a framework to deliver high quality locally distinctive development. In addition policies ESD1 to 3 of the Adopted Local Plan seek to mitigate and adapt to climate change.
- 8.22. The Non-Statutory Local Plan also contains relevant policies as set out below: Policy EN31 (Countryside Protection) (like its equivalent policy C9 in the Adopted Cherwell Local Plan 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.
- 8.23. 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

- 8.24. 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.
- 8.25. The western boundary and southern and eastern boundaries to the site are heavily tree’d and with well-established mature hedgerows providing a strong visual barrier to the wider open countryside beyond the site to the west. The site visually is well-contained by tree-lined boundaries and being bounded on one side by existing residential development.
- 8.26. 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 environmental 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.
- 8.27. The applicants submitted LVIA was the subject of an audit by a CDC appointed Landscape architect firm whose response set was in summary after revisions to the

submitted original LVIA that the landscape impact of the development was acceptable and would not materially be detrimental to the local landscape.

Conclusion

- 8.28. 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. And a specialist audit of that document. Any harm that would be caused to the wider landscape setting would not be so significant to warrant a reason to refuse the application.

Ecology Impact

Legislative context

- 8.29. 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.
- 8.30. 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.
- 8.31. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 8.32. 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.
- 8.33. 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, pipelines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

Policy Context

- 8.34. Paragraph 174 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.
- 8.35. Paragraph 180 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.
- 8.36. Paragraph 185 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.
- 8.37. 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.
- 8.38. 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.
- 8.39. 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.
- 8.40. The Planning Practice Guidance dated 2014 postdates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities 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

8.41. Natural England's Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:

- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPA's 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')

8.42. 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

8.43. 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.

8.44. 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.

8.45. 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, 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.

8.46. 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.

Conclusion

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

Highway safety and vehicular access

Policy context

- 8.48. The NPPF (Para. 105) 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.
- 8.49. The NPPF (Para. 106) 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.
- 8.50. Both Policies ESD15 and SLE4 of the CLP 2031 reflect the provision and aims of the NPPF. Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions”*; whilst Policy SLE4 states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported”*.
- 8.51. 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

- 8.52. All matters are reserved except access. The development would include a new access from Balmoral Avenue (south) via the approved adjoining residential appeal site to serve the new housing.
- 8.53. 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
- 8.54. The NPPF (Para. 111) 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’*.
- 8.55. The LHA raises no objection to the application on the basis of highway safety.
- 8.56. 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.

Conclusion

- 8.57. 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 Local Plan Policy ESD15 in this regard and government guidance within the NPPF.

Rights of Way, access, and pedestrian connectivity

Policy Context

- 8.58. 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 126 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".
- 8.59. At paragraph 119 of the NPPF states that planning decisions should support development which make effective 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".
- 8.60. Local Plan 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.*"
- 8.61. Local Plan 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.
- 8.62. 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.
- 8.63. 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.
- 8.64. 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

- 8.65. 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 forming the northern boundary of the adjoining appeal site where there is a requirement to upgrade the footpath. 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.
- 8.66. 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.
- 8.67. 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 some 400m of the site and include provision for the improvement of the existing right of way.
- 8.68. 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 and will be upgraded via the proposed S106 agreement

Conclusion

- 8.69. For the reasons set out above, the site as 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 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

- 8.70. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2031 which states that: 'new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space'.

Assessment

- 8.71. 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 together with adopted Policies ESD 1 to 3 and the comments of Thames Valley Police in terms of layout and defensible space. Appropriate positioning and scale of dwellings, boundary treatments and the nature of such treatments could be given due consideration at reserved matters stage.
- 8.72 The nearest residential properties to the site would be on the adjoining approved residential development site, Thornbury Rise to the north and Balmoral Avenue south. In terms of the properties to be built on the appeal site and Thornbury Rise these are to the east and north respectively of the boundary of the proposed site separated by well-established trees and hedgerows 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
- 8.73. A very few properties along Balmoral Avenue South would be located adjoining tangentially side on to the site. They are currently separated from the site by some shrubs, trees, 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.
- 8.74. 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

- 8.75. 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

- 8.76. 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 adopted Cherwell Local Plan part 1 2011-2031 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

- 8.77. 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. Policy BSC 3 of the Local Plan requires 30% of the total number of dwellings to be affordable housing with a tenure split of 70% rented and 30% intermediate. The proposal for 15 affordable dwellings complies with this policy and is acceptable to the Strategic Housing Team. The proposal does not mention the tenure split, on this proposal and the Strategic Housing Team expect 11 rented and 4 intermediate/low-cost home ownership dwellings. The proposed types and sizes of dwelling proposed are acceptable.
- 8.78. The proposals include / allow for the affordable housing provision set out above, which would need to be secured through a Section 106 agreement. The First Homes initiative that has recently been introduced by the government is not in this case applicable as within the transitional arrangements its does not become operable for applications determined prior to 28 March 2022.

Conclusion

- 8.79. 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

- 8.80. 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.
- 8.81. Policy ESD7 of the CLP 2015 requires the use of Sustainable urban Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

Assessment

- 8.82. 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 because of the proposal.
- 8.83. OCC as LLFA have raised no objections to the proposal subject to the impositions of appropriate conditions, similarly CDC drainage officer has also raised no objections.

Conclusion

- 8.84. 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.

Infrastructure

Policy Context

- 8.85. 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.

- 8.86. 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.”
- 8.87 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.
- 8.88. 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

- 8.89. 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
- 8.90. 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.
- 8.91 The requirements as recommended by both CDC, and OCC and NHS OCC Group are set out in the final section of this report together with the required monitoring fees for CDC and OCC. .

Conclusion

- 8.92. A number of items of infrastructure 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.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The overall purpose of the planning system is to seek to achieve sustainable development as set out in the NPPF. The three dimensions of sustainable development must be considered in order to balance the benefits against the harm. 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.
- 9.2. The application proposal seeks consent for up to 49 dwellings beyond the edge of Banbury. Planning policy directs residential development towards Banbury, the application site is located outside of the settlement where policy presumes against this type of development. However, the Council currently has a housing land supply of some 3.8 years, well below the 5 year requirement. The application as discussed above falls to be considered under the tilted balance which providing the site is found to be sustainable and in accordance with non-geographic specific policy in the development plan there is a presumption in favour of the development.
- 9.3. 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 ensure 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.
- 9.4. 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, drainage, and in ecological terms.
- 9.5. Though the development of a greenfield site the proposal by its nature would have an adverse impact on the character and appearance of the site and its surroundings albeit that this harm would be limited, and the harm that would be caused to the wider landscape setting would not be so significant to warrant a reason to refuse the application, nor to adversely affect the planning balance to such an extent as to justify a refusal of permission.
- 9.6. The proposal would deliver additional new housing including affordable housing and significant weight must be attached to this benefit as was the case in respect of the recent appeal decision of the Inspector on the adjoining site. Against this must be balanced the proposal's impact on the character and appearance of the site and its immediate surroundings. 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.

10. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO:

- i. SUBJECT TO NO OBJECTIONS AND RECOMMENDED CONDITIONS FROM THE COUNTY ARCHAEOLOGIST FOLLOWING SUBMISSION BY THE APPLICANT OF THE RESULTS OF THE ON SITE TRIAL TRENCHES;**
- ii. THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY); AND**
- iii. AND THE COMPLETION OF A SECTION 106 AGREEMENT TO PROVIDE CONTRIBUTIONS TO PUBLIC TRANSPORT, HIGHWAY IMPROVEMENTS, AND COMMUNITY INFRASTRUCTURE AS SET OUT BELOW.**

S106 Heads of Terms

- a) Provision of 30% affordable housing on site
- b) Payment of a financial contribution towards off site outdoor sports and recreation provision in the locality of £1,992.73 per dwelling, plus £335.32 per resident towards indoor facilities (index linked)
- c) Payment of a financial contribution towards the provision of community hall facilities for the development based on 2.46 persons per dwelling and providing 0.185 sq. m per person plus £200 per dwelling for public art and 5% management and 7% maintenance.
- d) Payment of a financial contribution towards educational infrastructure serving the site for primary, secondary, and secondary land contribution, and special needs education of £15,221 per dwelling (index linked)
- e) Payment for public art £224 per dwelling.
- f) Payment of a financial contribution of £94 per dwelling, index linked, towards household waste and recycling facilities.
- g) Payment of a financial contribution towards primary health care provision serving the development of £864 per dwelling (index linked)
- h) Payment of the Council's and OCC's monitoring costs.
- i) Enter into Section 278 Agreement for Highway works - £62,772, indexed to Q1 2018 BCIS. A361 Bloxham Road / Queensway / Springfield Avenue junction improvements
- j) Public transport services £51,499, indexed linked. Strengthening and enhancement of the B5 bus service.
- k) Public Rights of Way improvement £30,000. Indexed to November 2021. Improved surfacing and furniture to footpath 120/24.
- l) Public Rights of Way improvement, £5,000. Indexed to November 2021. Surfacing, furniture, and other measures to nearby public rights of way network

CONDITIONS

1. No development shall commence until 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. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of one year from 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 three 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).

4. Except where otherwise stipulated by conditions attached to this permission the development shall be carried out strictly in accordance with Drawing Nos:21303 PA02 site location plan, 23158 05 Rev A site access plan.

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

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

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.

6. No development shall take place until a desk study, to include a site walk over and to identify all potential contaminative uses on site and to inform the conceptual site model have 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', has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved desk study.

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.

7. If a potential risk from contamination is identified as a result of the work carried out under condition 6, a comprehensive intrusive investigation 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'. The report shall be submitted to and approved in writing by the Local Planning Authority before development is commenced.

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.

8. If contamination is found by undertaking the work carried out under condition 7, 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'. The scheme shall be submitted to and approved in writing by the Local Planning Authority before development is commenced.

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.

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 shall 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. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles including an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - a. Discharge Rates.
 - b. Discharge Volumes.
 - c. SUDS (Permeable Paving, Soakaway Tanks);
 - d. Maintenance and management of SUDS features (to include provision of a SUDS Management and Maintenance Plan);
 - e. Infiltration in accordance with BRE365.
 - f. Detailed drainage layout with pipe numbers.
 - g. Network drainage calculations.
 - h. Phasing.
 - i. Flood Flow Routing in exceedance conditions (To include provision of a flood exceedance route plan).

Development shall be carried out in accordance with the approved surface water drainage scheme.

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.

11. No development shall take place until full details of the means of access between the

planning application site and the highway on the adjoining residential site the subject of an appeal immediately to the east of the site, including, position, layout, construction, drainage and vision splays, have been submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in accordance with the approved details before any dwelling is occupied and shall be retained as constructed thereafter.

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

12. No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall incorporate the following:
 - a. The CTMP must be appropriately titled, include the site and planning permission number.
 - b. 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.
 - c. Details of and approval of any road closures needed during construction.
 - d. Details of and approval of any traffic management needed during construction.
 - e. Details of wheel cleaning/wash facilities – to prevent mud etc, in vehicle tyres/wheels, from migrating onto adjacent highway.
 - f. Details of appropriate signing, to accord with the necessary standards/requirements, for pedestrians during construction works, including any footpath diversions.
 - g. The erection and maintenance of security hoarding / scaffolding if required.
 - h. A regime to inspect and maintain all signing, barriers etc.
 - i. Contact details of the Project Manager and Site Supervisor responsible for onsite works to be provided.
 - j. The use of appropriately trained, qualified and certificated banksmen for guiding vehicles/unloading etc.
 - k. 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.
 - l. Layout plan of the site that shows structures, roads, site storage, compound, pedestrian routes etc.
 - m. 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.
 - n. 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.
 - o. Any temporary access arrangements to be agreed with and approved by Highways Depot.
 - p. Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours.

Development shall be carried out in accordance with the approved CTMP.

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.

13. Prior to first occupation of the development a Travel Information Pack shall be submitted to and approved in writing by the Local Planning Authority. 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.

14. Prior to its first occupation each dwelling shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure

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

15. No development shall take place until full details of the proposed footpath joining the new development to the highway a continuation Balmoral Avenue (north) to the east of the site, including, position, layout, construction, drainage and a timetable for the delivery of the improvements, have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the footpath has been constructed in accordance with the approved details.

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.

16. No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out 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.

17. No development shall take place until details of the means by which all dwellings shall 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) has been submitted to and approved in writing by the Local Planning Authority. Development shall 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.

18. No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres per person per 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.

19. No development shall take place, including any demolition and any works of site clearance, and as part of any reserved matters application for layout and landscaping, until a method statement and scheme for enhancing biodiversity such that an overall net gain for biodiversity is achieved, has been submitted to and approved in writing

by the Local Planning Authority. The scheme shall include details of enhancement features and habitats both within green spaces and integrated within the built environment, shall be in general compliance with Ecological Assessment report reference: edp7133_r002a shall include a biodiversity impact assessment metric, and shall include a timetable for provision of the biodiversity enhancement measures. The biodiversity enhancement measures shall be carried out and shall be retained in accordance with the approved scheme.

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.

20. No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out 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.

21. 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. Development shall be carried out in accordance with the approved strategy.

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.

22. The development hereby permitted shall be carried out in accordance with the recommendations set out in sections 5 and 6 Ecological Appraisal, report reference: edp7133_r002a

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. No dwelling shall be occupied until approval has been given in writing by the Local Planning Authority that either:

- a. Evidence to demonstrate that all water network upgrades required to accommodate the additional flows/demand from the development have been completed; or
- b. 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 dwelling shall be occupied 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.