

**Case Officer:** Wayne Campbell

**Applicant:** GG Oxford Investments Ltd

**Proposal:** Demolition of existing building and erection of building to form 48no apartments together with landscaping, car parking, bin stores, secure cycle parking and associated infrastructure

**Ward:** Bicester West

**Councillors:** Cllr Broad, Cllr Sibley and Cllr Webster

**Reason for Referral:** Major development – 10 or more dwellings

**Expiry Date:** 14 March 2022

**Committee Date:** 14 July 2022

**Note: This application is subject to a Committee Site Visit**

**SUMMARY OF RECOMMENDATION: DELEGATE POWERS TO GRANT PERMISSION, SUBJECT TO: RESOLUTION OF LEAD LOCAL FLOOD AUTHORITY OBJECTION; CONDITIONS; AND A SECTION 106 LEGAL AGREEMENT**

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

- 1.1. The application relates to the former Bicester Magistrate Court building located in a broadly rectangular site within the Bicester Town Centre area. The building is currently vacant and being disposed on the open market.
- 1.2. The former magistrate court building is essentially a two-storey T-shaped brick building with a series of more modern single storey extensions to the rear. The building is surrounded on all sides with tarmac hard standing, which provides a car parking area for users / visitors of the building. Incidental landscaping is maintained along all boundaries with semi-mature trees located to the front (southern) boundary of the site.
- 1.3. The southern boundary to the site is marked by a two-storey building the front of which is occupied by the Redeemed Christian Church of God while to the rear the building is occupied by the National Probation Service and also the Bicester Fire Station is located in a further separate building. To the north the site boundary is marked a hedgerow beyond which is the access road serving the Bicester School, Bicester Leisure Centre, and St. Mary's Primary School. The boundary to the and the west the boundary is marked by a close boarded fence beyond which are the playing fields for The Bicester school. To the east the site is marked by Queens Avenue.

## **CONSTRAINTS**

- 2.1. The application site is a short distance from Bicester town centre and lies just outside the Bicester Town Centre Extension (Area of Search). Although not located within the Bicester Conservation Area the existing building is recorded as a locally listed building / non-designated heritage asset. The site is located within the Bicester Air Quality Management Area.

## **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. This application seeks planning permission for the re-development of the site for residential use. The form of this re-development is for the demolition of the existing building and its replacement with a single building to provide 48 no apartments together with landscaping, car parking, bin stores, secure cycle parking and associated infrastructure. In terms of breakdown of accommodation, the proposal is for 13 x 1 bedroom apartments and 35 x 2 bedroom apartments.
- 3.2. The proposed building would be three storeys in height with a crescent shaped footprint with a central courtyard to the rear of the building. The main entrance to the building would be along the Queens Avenue frontage which would also provide the only vehicle access to the site via the existing vehicular access point.
- 3.3. In terms of design the proposal is for a modern / contemporary design with a combination of local materials, natural stone at the ground floor and an off-white render to upper floors. The design approach aims to make the most effective use of a previously developed site, as required by national and local planning policy. As such, the development achieves a higher density than the current use, in recognition of the town centre location and its proximity to public transport.

## **3. RELEVANT PLANNING HISTORY**

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

02/02489/OCC: Ref. C.19/02. Single storey rear and side extension to provide witness suites accommodation – Permitted

02/02491/OCC: Ref. C.20/02. Single storey rear and side extension to provide witness suites accommodation – Permitted

## **4. PRE-APPLICATION DISCUSSIONS**

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

*21/03683/PREAPP*

- 5.2. Re-development of the site including demolition of the existing building. Construction of approximately 50 no apartments.
- 5.3. The advice provided to the applicant confirmed that the site is located in a sustainable urban location with good access to shops, facilities and services. However, the merits of providing additional housing needs to be considered alongside issues such as the impact on heritage assets, biodiversity and ecology, highways, air quality and the requirement to meet high quality design standards. The compatibility of the proposal to neighbouring uses would also need to be considered.
- 5.4. The advice confirmed support for the proposed residential development of the site, but only on the strict provision that amendments were made to reduce the scale of

the proposal that the development use Natural stone along with either render or brick, that the existing trees along the front were retained and that there was a revision to the layout for car parking.

## 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 **15 September 2021**. Comments received after this date have been accepted on the basis that the application remains under consideration.

6.2. There were 20 objections, 103 submissions of support and 4 comments received. The comments raised by third parties are summarised as follows:

6.3. Comments of support include:

- Support more homes being built on brownfield sites in the local area and not enough currently available.
- More homes being built in the local area as this would create more jobs and increase the chances of younger families getting onto the property ladder
- Work in the school next door to that site, I am unsure what else could be build there so there is always a need for more homes
- Environmental Records Centre records show Swifts and House Sparrows breed very near this site, the proposals should make provision for these and other hole-nesting species by incorporating nesting bricks.

6.4 Comments objecting to the proposal includes:

- Highway safety concern with 48 cars from 48 apartments
- Queens Court is bad as it is and adding extra vehicles next to a primary secondary and leisure centre will increase risk to children, create a bottleneck and cause increase in co2.
- Already enough housing in Bicester needs more infrastructure than houses
- Premises may need adapting to modern standards, but making it a public asset would be better eg education, arts, museum, music, theatre, dance groups etc. Even Bicester Town Council to relocate out of Garth House.
- Flats would likely only be buy-to-let Air BnBs for Bicester Village and not be part of the Bicester community.
- In principle I don't object to a town centre site being used for housing I would rather this happen than green space be developed, however, not enough parking for 48 flats no suggestion / proposal of where visitors are expected to park.
- No turning area for Council Refuse Vehicles within the site the process of wheeling out 48 bins, across the footpath, and then returning them, the refuse men will 'in conflict' with other users on the footway and users of Queens Avenue.
- Significant impact on The Bicester School, especially the likely required access to the new properties and services including refuse and waste collection and increased traffic on our access road and the potential heightened risk to our 11-18 students, 1300 in total.

- Lack of small community halls – but no performance hall or many modern, accessible, larger community spaces, *disappointing that this sizable public building in the town centre has apparently been sold for commercial residential development without any meaningful opportunity for discussion of positive community use of the building and the site.*
- *Bicester needs more areas available for hire - a decent-sized performance hall of for instance. In addition, there are churches looking for places to build, the members of which contribute to society in a disproportionately positive way*
- Magistrates Court and the other civic buildings should have been saved for the town. Civic buildings along Queens Road forms very important part of the town's history and Waverley House 'locally listed' asset in the Bicester Conservation Area Appraisal clearly meets the heritage assets criteria of contributing to the local environment, given its close links to the Police House and other civic buildings surrounding it.
- 3 storeys an infringement of privacy and dependent on the retention of mature trees, which are already 100 years old, to maintain privacy and would look out of place in the immediate area, bulk, design, scale and height (3 to 3.5 story) of the proposed building, and general visual impact of the proposed development will create a significant impact, and possible over-looking on neighbouring residential homes.
- The two bed apartments will obviously attract families and the lack of private gardens will still apply. Planning Authority must not accede to reduced affordable housing to satisfy the developers financial viability.
- *Bicester struggling to provide our students with the right educational, social, emotional and mental health support given the rise in these areas as an effect of the pandemic years and huge loss of learning. Building should be used as Special Therapeutic School for 11-16 year olds that have learning difficulties, social, emotional and mental health needs.*

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

## 7. RESPONSE TO CONSULTATION

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

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BICESTER TOWN COUNCIL: **Objection.** Concerns over refuse access, development will result in the loss of part of Bicester Heritage in conservation area, development will cause overlooking onto residential homes and recreational areas, and finally concerns raised over the issue of parking.

7.3. CHESTERTON PARISH COUNCIL: **Objection.** *Application is controversial in itself because it is basically a zero-parking proposal. I know that some local Councillors oppose this scheme and as local Councillors their views should be upheld. Bicester needs a Community Hub which could be used for performances, functions and other uses. we have many requests for bookings in our Community Centre some of which we cannot accept and who would use a Community Hub in Bicester and the Magistrates Court with its space, location and parking would be a real benefit to the facilities available in a growing town.*

## CONSULTEES

- 7.4. OCC HIGHWAYS: **No objection.** Subject to conditions and S106 agreement
- 7.5. CDC WASTE & RECYCLING OFFICER: **No objection**
- 7.6. CDC CONSERVATION OFFICER: **Objection.** With the adjacent police house as part of the re-appraisal of Bicester Conservation Area as a 'Locally listed building', despite the fact that neither building is included within the conservation area boundary. The police house and magistrates court (along with the Fire and Ambulance Station and Civic Defence Training Centre which are not identified as 'locally listed buildings') form part of a group of mid-20th century civic buildings. They are of significance as a group and as part of the local context. The design of Waverly House (former council building, later magistrates court) was deliberately designed to pay reference to the Police House, which was built a few years earlier.

*The Historic England 'Law and Government Buildings' Designation Selection Guides states in relation to such buildings 'They can possess considerable community value and play key roles in our townscape. Sometimes the various functions (law courts, assembly rooms, concert halls, administrative quarters) were combined in a single structure or alternatively separately house but perhaps grouped together to form a municipal enclave'.*

The buildings are typical (rather than special) for their era and there is no suggestion that the buildings are of an architectural value worthy of listing. They are, however, of historic and communal significance within the context of Bicester and form part of the local history and development of the town. Hence their status as non-designated heritage assets. The contribution the buildings make to the setting of Bicester Conservation Area is as part of the civic development on the outskirts of the historic settlement.

- 7.7. CDC PLANNING POLICY: **No objection** subject to satisfactory consideration of impact on heritage assets, biodiversity and ecology, highways, air quality and existing neighbouring areas.
- 7.8. CDC LAND DRAINAGE: **No comments.**
- 7.9. OCC LEAD LOCAL FLOOD AUTHORITY: **Objection.** No mention of impermeable areas in the report. A comparison of betterment must be presented in order for us to conclude that the strategy is in line with our guidance. Where betterment cannot be provided, a valid justification must be provided. Furthermore, calculations do not the impermeable area used for hydraulic simulation.
- 7.10. THAMES WATER: **No objection** subject to conditions
- 7.11. ENVIRONMENT AGENCY: **No objection**
- 7.12. OCC EDUCATION: **No objection** subject to S106 contribution.
- 7.13. CDC ENVIRONMENTAL PROTECTION: **No objection** subject to conditions.
- 7.14. CDC LANDSCAPE: **No objection** subject to conditions
- 7.15. CDC RECREATION & LEISURE: **No objection** subject to S106
- 7.16. BICESTER BIKE USERS' GROUP: **Comment.** external cycle parking is now in a much more advantageous location, though we would be keen to ensure that the facility is secure. However, major concerns about the access arrangements for the

internal cycle storage as this accessed from the 'wrong' side of the building, which necessitates a journey around the whole of the building along a fairly lengthy, narrow, and contorted path. This is likely to be a huge disincentive for cyclists and would be completely inappropriate for a car-free development which would expect the highest level of service and convenience.

7.17. CRIME PREVENTION DESIGN ADVISOR: **Objection.** Concerns with the current proposals, particularly relating to defensible space and excessive permeability. Design and Access Statement (DAS) does not adequately address crime and disorder as required by CABE's 'Design & Access Statements- How to write, read and use them'. Require further details on Building Security, details on ground floor window functions and security, details on defensible space, revision to recessed entrance design, insufficient car parking provision, details of bin store and security issue.

7.18. LOCAL MEMBERS VIEWS: (Cllr. Les Sibley, also on behalf of Cllrs Michael Waine and Donna Ford)

**Objection.** *Application has a high level of public interest and concern amongst Bicester Residents. It lies close to a Conservation Area and within an area of an historic environment that contains many listed buildings. Development would represent an over-development of the site with an adverse impact on the character and appearance of the area.*

*The proposed development site on Queens Avenue is a main route through the town for traffic from the Oxford Road to the Buckingham and Banbury roads via Field Street which are already recognised as areas that suffers from high levels of traffic congestion, noise and air pollution. The Queens's Avenue is the only route for all buses and coaches through the town and into and out of the town centre via the traffic congested St. Johns Street. Lack of car parking spaces on a 48-unit development. (Council Policy requires 1.3 parking spaces per unit) No parking bays or access for residents who own a fossil fuel car. No designated parking bays or access for fossil fuel delivery vehicles. There are no public car parks available near the development site.*

*Lack of cycle provision and storage facilities with a proposed 48-unit development should provide 1 cycle per one bed unit and 2 cycles per two bed. Concerned about the adverse impact the proposed development will have on the Active Travel Measures of installing a Cycle Priority route on Queens Avenue.*

*The use of the existing Bus Stop area next to the site on Queens Avenue by the HGV Refuse Vehicles for the two- or three-times weekly collection of residents waste raises several highway safety issues for pedestrians' cyclists and motorists. Its Council policy not to collect residents waste from the Highway. The use of the Bus Stop on either side of Queens Avenue is for Buses only and any other vehicle parking in the area will be penalised. The refuse collection and cleaning vehicles at this time are all fossil fuel vehicles so would not be permitted to this site. Question whether access to the bin store is available as this section of Queens Avenue is not adopted highway.*

*Access and exiting the proposed development site across a well-used footpath and cycle way on Queens Avenue raises several highway safety issues for motorists, cyclists & pedestrians, especially for the 1300 + pupils who attend the three schools on the adjoining site. Concern about the lack of safety details for residents when exiting the block of high raise flats in an emergency.*

*Highways should ensure that a routing agreement for construction vehicles and the travel management plan are robustly enforced should the development proceed. I*

*wish to object to this planning application on the above Highway Grounds as this so called 'Car Free' development is not sustainable.*

*Development of 48 apartments should provide 30% affordable housing on the site as part of the proposal.*

7.19. CDC ECOLOGY: No comments received

7.20. CDC ECONOMIC DEVELOPMENT: No comments received

7.21. CDC HOUSING STANDARDS: No comments received.

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

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

- PSD 1: Presumption in Favour of Sustainable Development
- SLE 4: Improved Transport and Connections
- BSC 1: District Wide Housing Distribution
- BSC 2: The Effective and Efficient Use of Land – Brownfield Land and Housing Density
- BSC 3: Affordable Housing
- BSC 4: Housing Mix
- BSC 10: Open Space, Outdoor Sport and Recreation Provision
- BSC 11: Local Standards of Provision – Outdoor Recreation
- BSC 12: Indoor Sport, Outdoor Sport and Recreation Provision
- ESD 1: Mitigating and Adapting to Climate Change
- ESD 2: Energy Hierarchy and Allowable Solutions
- ESD 3: Sustainable Construction
- ESD 4: Decentralised Energy Systems
- ESD 5: Renewable Energy
- ESD 6: Sustainable Flood Risk Management
- ESD 7: Sustainable Drainage Systems
- ESD 8: Water Resources
- ESD 15: The Character of the Built and Historic Environment
- INF 1: Infrastructure

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

- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- C31: Compatibility of proposals in residential areas
- ENV1: Environmental pollution
- ENV12: Potentially contaminated land
- TR1: Transportation funding

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Parking Standards for Cherwell Urban Area,
- Cherwell Residential Design Guide Supplementary Planning Document 2018
- Oxfordshire County Council Residential Road Design Guide (2003) - Second Edition (2015)
- Oxfordshire County Council Cycling Design Standards A guide for Developers, Planners and Engineers 2017
- Oxfordshire County Council Suds Policy
- Bicester Conservation Area Appraisal (2011)

## 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
- Highway impact
- Residential amenity
- Ecology impact
- Sustainability
- Drainage
- S106

#### Principle of Development

- 9.2. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Also, of a material consideration is the guidance provided in the recently revised National Planning Policy Framework (NPPF) which sets out the Government's planning policy for England and how this should be applied.
- 9.3. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for this area comprises the adopted Cherwell Local Plan 2011-2031 ('CLP 2015') and the saved policies of the Cherwell Local Plan 1996 ('CLP 1996').
- 9.4. Policy PSD1 of the CLP 2015 states that when considering development proposals, the Council will take a proactive approach to reflect the presumption in favour of sustainable development contained in the National Planning Policy Framework. The policy continues by stating that planning applications that accord with the policies in this Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise. Paragraph B88 of the CLP 2015 also highlights that by focusing development in and around the towns of Bicester and Banbury we aim to ensure that the housing growth which the District needs only takes place in the locations that are most sustainable and most capable of absorbing this new growth.
- 9.5. Policy BSC2 of the CLP 2015 highlights the importance of effective and efficient use of land and the use of sites. Under this Policy it is highlighted that housing development in Cherwell will be expected to make effective and efficient use of land.



The Policy also states that the Council will encourage the re-use of previously developed land in sustainable locations. New housing should be provided on net developable areas at a density of at least 30 dwellings per hectare unless there are justifiable planning reasons for lower density development.

- 9.6. In determining the acceptability of the principle of new dwellings regard is paid to Government guidance contained within the NPPF. This explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 9.7. Paragraph 10 of the NPPF states that *so sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development*. Paragraph 11 defines the presumption in favour of sustainable development as *approving development proposals that accord with up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*.
- 9.8. Paragraph 12 also advises, amongst other things that the *presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted*. The NPPF also states that *a Local Planning Authority may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed*.
- 9.9. Section 5 of the NPPF covers the issue of delivering a sufficient supply of homes, and paragraph 60 states that *to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay*.
- 9.10. Paragraph 73 highlights the need for Local Planning Authorities (LPAs) to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period). Paragraph 74 continues by stating that *a five-year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:*
  - a) *has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and*
  - b) *incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.*
- 9.11. The site is clearly located within the urban area of Bicester Town Centre. The existing building on the site is no longer required for its previous use. The proposal would therefore represent a re-development of a brown field site in an urban area. As

highlighted above, the Council seeks to focus new development in and around Bicester and Banbury which this proposal would comply with. The site is also considered to be in a sustainable location within easy access to the main facilities and amenities being approximately 450m from Bicester Town Centre. The front of the site looks onto Queens Avenue a major road within Bicester and immediately to front of the site is a bus stop served by route 26 which runs into Bicester Town centre and Bicester Village on a half hour service.

- 9.12. Policy BSC2 (Effective and Efficient Use of Land - Brownfield Land and Housing Density Housing) of the CLP 2015 highlights that the Council will seek to ensure that all new developments in Cherwell *will be expected to make effective and efficient use of land* and that the Council *will encourage the re-use of previously developed land in sustainable locations*. This development would re-use this previously developed site for the provision of 48 apartments which will ensure that the site is developed to make the most effective and efficient use of the site in compliance with Policy BSC2.
- 9.13. In addition to the above, the decision maker must have regard to Cherwell's housing land supply position, most recently reported in the Council's 2021 Annual Monitoring Report (AMR). The 2021 AMR concludes that the District can demonstrate a 3.5 year supply for the current period 2022-2027 commencing on 1 April 2022. There is a shortfall of housing supply equal to 2,255 dwellings for the period 2022-2027. It is clear that the current application for 48 apartments would make a significant contribution towards the Council's housing stock and this in itself weighs in favour of the development.
- 9.14. Members will see that some objections have been raised over the loss of the building as a potential community asset with suggestions that the building be used as a community hall / Special Therapeutic School / music venue etc. Although the community use of the building may be considered as an alternative use of the site this proposal is for the re-development of the site for residential use and not community use. The LPA is required to consider the application presented at the current time and to determine whether the proposal is appropriate. Alternative uses of the site would clearly have different implications in terms of highway movements / parking, noise levels and potential disturbance on the local residents for which there is no information provided and therefore cannot be considered in this application. The LPA is required to determine the application before it and must not compare the proposal against a hypothetical alternative use which is not before this committee.
- 9.15. For the above reasons, the principle of the re-development of the site for residential use is considered acceptable.

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

- 9.16. Government guidance contained within the NPPF requiring good design states that *good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people*. Further, *permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions*.
- 9.17. Saved Policies C28 and C30 of the CLP 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context. New housing development should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.

- 9.18. Policy ESD 15 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 ensuring a high-quality design.
- 9.19. 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*
- 9.20. The Council's Design Guide seeks to ensure that new development responds to the traditional settlement pattern and character of a town. This includes the use of continuous building forms along principal routes and the use of traditional building materials and detailing and form that respond to the local vernacular.
- 9.21. The existing building on the site is a large two-storey T-shaped brick-built building with a series of more modern additions. Areas of car parking wrap around the building, whilst there is a small amount of landscaping at the site frontage, and a small area of grass to the rear of the building. The building is set back from the site frontage, with views to the building being partially restricted by a number of mature trees, whilst the remaining site boundary is well enclosed with trees and mature hedgerow planting.
- 9.22. When compared to the existing building on the site the new development would appear as a larger development at 3 storeys but with the incorporation of a shallow pitched roof hiding a flat roof area the overall height of the building would not appear out of place on this site. In terms of position within the site the current building is set back with the provision of a hardstanding area to the front of the building along with a single access arrangement. The proposed scheme shows the use of the frontage of the site with a 'U' shaped building which maintains an enclosed private courtyard to the rear of the building. The building would therefore be positioned closer to the Queens Avenue frontage than that of the existing building. As highlighted in paragraph 9.20 above the Council's Design Guide seeks to ensure that new development continues the building form along principal routes. The position of the proposal fronting onto Queens Avenue before continuing along the section of Queens Avenue to the north east ensures that the development complies with this design guide requirement. Furthermore, the proposal retains the existing trees located along the main frontage of the site which would help soften the appearance of the development within the street scene.
- 9.23. The proposed new apartment building would be constructed from different materials to that of the existing former magistrates building. The existing building is constructed from a dark red brick with dark grey roof tiles. The proposed apartment building would be constructed using a stone on the ground floor with pale render for the two floors above. The windows on the first and second storeys would be highlighted using a mix of stone or timber cladding which would reduce the impact of the render on the elevations and help to break up the mass of the building. The shallow pitched roof would be faced in a slate grey tile similar to that used on the existing building. Overall, it is considered that the proposal would result in an appropriate, high-quality development within the street scene that would contribute positively to and not detract from the area's character, compliant with Policy ESD15 of the CLP 2015.

## Heritage impact

- 9.24. The site is not located within but lies approximately 50m outside the Bicester Conservation Area and as such the development would have an impact upon the setting of the Conservation Area. The existing building, the former Magistrates Court, is a locally listed building and therefore a non-designated heritage asset, though it is not a nationally listed building. The building was constructed as an alternative civic building (council offices) and formed part of a group of civic buildings (police station, fire station etc) and has group value as part of this.
- 9.25. 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.*
- 9.26. 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.*
- 9.27. Paragraph 202 highlights that *where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.* Paragraph 203 of the NPPF continues by stating that *the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.* Policy ESD15 of the CLP 2015 highlights that new development proposals should, *conserve, sustain and enhance designated and non-designated 'heritage assets' including buildings, features, archaeology, conservation areas and their settings, and ensure new development is sensitively sited and integrated, furthermore development should respect the traditional pattern of the form, scale and massing of buildings.*
- 9.28. The Council's Conservation Officer objects to the proposals on the basis that the Waverley House has historic significance in a local context and advises that the building could be converted to residential – potentially with some extensions to the building. The Conservation Officer is of the view that the re-use of the existing building would allow the embodied carbon within the building to be retained which is increasingly being recognised as a way of meeting climate change targets. The demolition of the building would clearly result in substantial harm to a non-designated heritage asset. There are also concerns about the impact the proposed demolition of the building would have on the streetscape and setting of the Bicester Conservation Area through the loss of part of the 'set piece' of civic buildings. The Conservation Officer also considers the scale, massing, design, materials and location on the plot of the proposed building to be entirely inappropriate for the specific location and to have a detrimental impact on the streetscape and setting of the Bicester Conservation Area.
- 9.29. In response to the objection raised by the Conservation Officer, the applicant has provided an updated advice note which is to be read alongside the initial Heritage Assessment submitted with the application. The amended Heritage Note highlights that although the existing building is locally listed along with the police station neither of these buildings makes a positive contribution to the Bicester Conservation Area

(though neither do they make a negative contribution) and refers to the map at page 54 of the Bicester Conservation Area appraisal. The applicant also considers the fact that it is one of a number of mid- century civic buildings to have no specific relevance to the special interest of the Conservation Area, which is designated for different architectural and historical attributes.

- 9.30. Officers consider this approach to show a miss-reading of the map on page 54 of the Bicester Conservation Area appraisal. The map highlights unlisted buildings within the Conservation Area which make a significant positive contribution to the character and appearance of the Conservation Area - the map does not refer to those unlisted buildings outside the Conservation Area and this was not the purpose of the map provided.
- 9.31. Waverley House is an important building in the context of local history. The advice in paragraph 203 of the NPPF is clear that *the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.* That said, the building has clearly reached a point where its continued use as a magistrate court has ended and therefore a new use for the building / site needs to be found. The principle of the residential use is in-line with adopted policy and not disputed by the Conservation Officer with the main conflict being the re-development of the site with a new building.
- 9.32. The applicant's agent has stated that the re-use / conversion of the building would not be feasible due to its layout and the conversion of the building would not result in the same level of accommodation being provided and would not therefore result in an efficient use of the site.
- 9.33. The loss of the building needs to be weighed in the planning balance against the benefit of the re-development of the site for a significant level of residential use. It must also be noted that given the site's location outside of the Conservation Area the demolition of the existing building could, subject to a prior notification application relating to the method of demolition, be carried out as permitted development.

#### Highway impact

- 9.34. Paragraph 110 of the NPPF states that in assessing specific applications for development, it should be ensured that:
- a) *appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
  - b) *safe and suitable access to the site can be achieved for all users; and*
  - c) *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*
- 9.35. In addition to this, paragraph 111 highlights that *development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*
- 9.36. Policy ESD15 of the CLP 2015 states that, *new development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions.* Policy SLE4 states that *all development where reasonable to do so, should facilitate the use of sustainable*

*modes of transport (and) development which is not suitable for the roads that serve the development, and which have a severe traffic impact will not be supported.*

- 9.37. The proposal seeks to retain the existing access point onto Queens Avenue with a single access point as current exists. The access would lead to a small parking area with 2no disable parking spaces along with a turning head which is larger enough for access to and from by a large delivery van. The applicant's approach is for a car free development due to the sustainable location close to Bicester Town centre with all the public facilities and amenities the town offers. To support this approach the proposal also provides a significant level of cycle parking spaces with a free-standing enclosed cycle store to the front of the development providing 32no cycle spaces plus a further cycle storage area in the centre of the main building on the ground floor providing a total of 52 cycle spaces. Furthermore, the applicant highlights that the site is served by an existing bus stop positioned directly outside the front entrance to the site which allows easy access for residents onto and off public transport routes. As highlighted in the paragraphs above this bus stop served by route 26 which runs into Bicester Town centre and Bicester Village on a half hour service and hence allows for a quick and easy public transport route as an alternative to the private car.
- 9.38. The local highway authority (LHA) has no objection to the proposal on highway safety grounds. The LHA has confirmed that it is developing and implementing active travel measures along key transport corridors in Bicester to facilitate and encourage walking and cycling. Various measures are under development for the Kings End / Queens Avenue / Buckingham Road which, it advises, would require this development to make a Section 106 contribution of £88,380 towards the funding of these measures as they pass the frontage of the proposed development. Notwithstanding the fact that the applicant has stated that the proposed scheme is not viable with any S106 monies required the applicant has agreed to make a contribution of £46,880 towards the highway improvement measures as requested by OCC Highways. This contribution would be added to contributions provided by other permissions along Queens Avenue to help pay for the highway improvements to ensure that the development is acceptable from a highway safety point of view.
- 9.39. On a final point regarding highway safety, the proposal seeks to address the issue of refuse collection by locating the main bin storage is located in the north section of the site. Access to the bins during bin collection day would be via the section of Queens Avenue leading to the primary school, leisure centre and Bicester Community College with the bin lorry collecting the bins from the highway rather than entering the site. The Council's Waste & Recycling officer has no objections to this proposed arrangement. Notwithstanding, comments raised by third parties that this section of Queens Avenue is not an adopted section of highway raising a question over access rights. The Council's waste team has advised that this would not be an issue in that the schools and the leisure centre all have refuse collected from unadopted roads and therefore this site would be no different. The LHA has also commented that this location for bins and point of collection is appropriate. Furthermore, following further investigations with Land Registry, it is clear that the access to the schools and leisure centre, although not included as adopted highway, is owned by Oxfordshire County Council which would allow access rights.
- 9.40. Further concern over safety has been raised as part of the objections to this proposal and in particular the safety of pupils / students arriving and leaving the schools along this section of Queens Avenue. Officers acknowledge that the refuse vehicle would be parked on the highway and that this would restrict access along this access road to the schools and leisure centre. However, the width of this section of Queens Avenue is approximately 6.75m which compares to an average width of 4.8m for a public highway increasing to 6.75m for a bus route. It is considered that there would be adequate space for other road users to pass the refuse vehicle on bin collection

day to ensure safe passage. The only footpath along this section of Queens Avenue is located along the north side of the road and the opposite side of the road to the development site. This side of the road also maintains a post guard rail between the road edge and the footpath to ensure that pedestrian safety is maintained. Overall, it is considered that the access arrangements for the bins on this site would not result in a highway safety issue to warrant a refuse of permission.

#### Residential amenity

- 9.40 Saved Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2015, which states that, new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space.
- 9.41 The closest neighbouring properties are located on the opposite side of Queens Avenue in Queens Court and are approximately 30 – 39 metres from the edge of the application site and the rear elevation of the existing residential property. Although concern has been raised by objectors to the scheme that the development would result in a loss of privacy it is considered that this distance is more than sufficient to ensure that the development of the site although at three storeys would not result in any significant loss of privacy, light or outlook. The distance between the site and the rear elevations of these neighbouring properties would also exceed the distance required as outlined in the Cherwell Council Design Guide by around an extra 10m. As such it is not considered that the development as proposed would not have any significant adverse impact upon the neighbours' amenities.

#### Ecology Impact

- 9.42 The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 9.43 Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.
- 9.44. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.45 The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be

made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:

- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
- (2) That there is no satisfactory alternative.
- (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

9.46 The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

9.47. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

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

9.49. Paragraph 180 of the NPPF states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

9.50. 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.

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



- 9.52. These polices are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.53. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities 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.
- 9.54. This application is supported by a Preliminary Ecological Appraisal (PEA) of the site which was undertaken in September 2020 by a suitably experienced ecologist. The results of the PEA conclude that there was no evidence of bats was identified during the internal or external inspections. It was noted that there is a small number of potential roosting features were identified during the inspection the building was deemed to have low potential to support roosting bats. With regards to birds the PEA highlights that the scattered trees and hedgerows offer suitable habitat for a variety of common nesting birds, but this is unlikely to be an important nesting feature in the local area due to the limited extent of this habitat at the Site. Where vegetation removal is required, it has the potential to cause adverse (not significant) impacts to nesting birds and avoidance measures should be implemented to prevent harm to these species as such the PEA highlights that any vegetation clearance should avoid the nesting bird season (March to August inclusive) or be checked by a suitably qualified ecologist immediately prior to clearance to check for nesting birds.
- 9.55. Turning to the issue of mammals the PEA confirms no record of any presence of badgers, otters, Hazel Dormouse nor any evidence of notable or protected invertebrates, reptiles or amphibians. The PEA does, however, confirm that records of hedgehog were provided by the biological records centre (TVERC, 2020), the closest of which was located c.480m south-east in 2019. The hedgerows and scrub on the site offer suitable foraging and commuting habitat for hedgehogs; therefore, good practice measures should be implemented throughout the construction phase to prevent harm to this species. The PEA recommends that good practice measures comprise covering, back filling or placing mammal ramps in any excavations at the end of each day and covering pipework to prevent any animals from becoming trapped. Any excavations should be checked first thing in the morning to ensure any trapped animals are able to be released.
- 9.56. Officers are satisfied, that in the absence of any objection from the Council's Ecology Officer, and subject to conditions, that the welfare of any European Protected Species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged.

### Sustainability

- 9.57 Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 150 states that new development should be planned for in ways that:
- a) *avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through*

*suitable adaptation measures, including through the planning of green infrastructure; and*

*b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.*

9.58 Paragraph 151 continues by stating, amongst other things, that *in order to help increase the use and supply of renewable and low carbon energy and heat, plans should:*

*c) identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.*

9.59 Policy ESD1 of the CLP 2015 covers the issue of Mitigating and Adapting to Climate Change and includes criteria under which application for new development will be considered. Included in the criteria is the requirement that development will incorporate suitable adaptation measures to ensure that development is more resilient to climate change impacts. These requirements will include the consideration of, *taking into account the known physical and environmental constraints when identifying locations for development. Demonstration of design approaches that are resilient to climate change impacts including the use of passive solar design for heating and cooling. Minimising the risk of flooding and making use of sustainable drainage methods and reducing the effects of development on the microclimate (through the provision of green infrastructure including open space and water, planting, and green roofs).*

9.60 Policy ESD 2 covers the area of Energy Hierarchy and Allowable Solutions. This policy seeks to achieve carbon emissions reductions, where the Council will promote an 'energy hierarchy' as follows: *Reducing energy use, in particular by the use of sustainable design and construction measures. Supplying energy efficiently and giving priority to decentralised energy supply. Making use of renewable energy Making use of allowable solutions.* Any new development will be expected to take these points into account and address the energy needs of the development.

9.61 Policy ESD 3 covers the issue of Sustainable Construction and states amongst other things that *all new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development through a combination of fabric energy efficiency, carbon compliance and allowable solutions in line with Government policy.* The Policy continues by stating that *Cherwell District is in an area of water stress and as such the Council will seek a higher level of water efficiency than required in the Building Regulations, with developments achieving a limit of 110 litres/person/day.* The Policy continues by stating that *all development proposals will be encouraged to reflect high quality design and high environmental standards, demonstrating sustainable construction methods including but not limited to: Minimising both energy demands and energy loss. Maximising passive solar lighting and natural ventilation. Maximising resource efficiency Incorporating the use of recycled and energy efficient materials. Incorporating the use of locally sourced building materials. Reducing waste and pollution and making adequate provision for the recycling of waste. Making use of sustainable drainage methods. Reducing the impact on the external environment and maximising opportunities for cooling and shading (by the provision of open space and water, planting, and green roofs, for example); and making use of the embodied energy within buildings wherever possible and re-using materials where proposals involve demolition or redevelopment.*

- 9.62 This application seeks planning permission for the re-development of this site for 43 apartments in a single building. The design of the building allows for the provision of an array of solar PV panels on the roof area to provide 21.85 kWp of solar PV panels to each apartment. In addition to this the building would also be fitted with an Air Source Heat Pump system which is an all-in-one exhaust air heat pump which provides heating, ventilation, heat recovery and hot water efficiently, simply, and economically which could be run in conjunction with the solar panels on the roof. These measures along with the fact that the built form would be constructed to an improved fabric would yield a 67% reduction over the Part L SAP 10 standard.
- 9.63 Based on the above points it is considered that the applicant has demonstrated that the proposal will comply with the requirements of Policies ESD1, ESD2 and ESD3.

#### Drainage

- 9.64 Section 14 of the NPPF covers the issue of meeting the challenge of climate change, flooding and coastal change. Paragraph 167 of which states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
- 9.65 Paragraph 169 of the NPPF continues by stating that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should: a) take account of advice from the lead local flood authority; b) have appropriate proposed minimum operational standards; c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and d) where possible, provide multifunctional benefits.
- 9.66 Policy ESD 6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 9.67 Policy ESD 7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.
- 9.68 The site is located wholly within Flood Zone 1 which is land that has a less than 1 in 1,000 annual probability of river flooding. Notwithstanding this the applicant has provided a surface water drainage strategy in support of the application.
- 9.69 The Local Lead Flood Authority (LLFA) Officer initially raised an objection to the proposal and requested further information. The applicant has provided additional information and the LLFA has been reconsulted. However, at the time of drafting this report the further comments from the LLFA were awaited. Until further comments from the LLFA are received it is accepted that there is an outstanding objection on the details submitted with the application and as such the application has failed to address the need to ensure that adequate drainage is provided on the site. The development

therefore fails to comply with policies ESD6 and ESD7 of the CLP 2015 as well as advice contained within section 14 of the NPPF. Were the LLFA to be content with the information officers would conclude the proposed development to be acceptable in terms of drainage.

### S106

9.70 Paragraph 54 of the NPPF states that *local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 56 continues by stating that planning obligations must only be sought where they meet all of the following tests:*

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.*

9.71 Policy INF1 of the CLP 2015 covers the issue of Infrastructure. This Policy states, amongst other things, that the *Council's approach to infrastructure planning in the District will identify the infrastructure required to meet the District's growth, to support the strategic site allocations and to ensure delivery by:*

- Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities.*

9.72 Policy BSC 3 of the CLP 2015 states, amongst other things that at *Kidlington and elsewhere, all proposed developments that include 11 or more dwellings (gross), or which would be provided on sites suitable for 11 or more dwellings (gross), will be expected to provide at least 35% of new housing as affordable homes on site. The Policy continues by stating that, all qualifying developments will be expected to provide 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms of intermediate affordable homes. Social rented housing will be particularly supported in the form of extra care or other supported housing. It is expected that these requirements will be met without the use of social housing grant or other grant.*

9.73 The Council also has a Developer Contributions SPD in place which was adopted in February 2018. It should, however, be noted that this is a general guide and development proposals will continue to be assessed on a case-by-case basis with the individual circumstances of each site being taken into consideration when identifying infrastructure requirements.

9.74 Due to the level of development on the site the issue of affordable housing should be taken into account. Paragraph 65 of the NPPF states that *where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.* This application is for 48 apartments on the site which would represent a major application in terms of definition. For this reason, the application should provide an element of affordable housing as part of the proposal.

9.75 The policy requirement is for 30% affordable housing as set out in Policy BSC3 in the CLP 2015 which would equate to 15 units with a 70:30 tenure split between rented and shared ownership. However, as part of the application the applicant has provided

a detailed viability assessment of the scheme which highlights that the proposal would not be viable with the cost of providing an element of affordable housing as part of the development. For this reason, the application as submitted would not be supported by any S106 contributions such as affordable housing.

- 9.76 To assist in the LPA's appraisal of this submission on viability officers instructed an independent review of the applicant's viability assessment which was carried out by Turleys. In reviewing the viability assessment Turleys confirmed that the findings of the applicant's assessment were reasonable and within the region of costs expected for this type of development. The Turley review of the development has therefore concluded support for the applicant's view that the proposed scheme is unable to make any contribution towards the provision of affordable housing whilst maintaining economic viability.
- 9.77 Taking this review into consideration the Strategic Housing Officer has confirmed that as the report concludes that the scheme is unviable with 30% and also 0% affordable housing, the Strategic Housing team will not be pursuing any affordable housing contributions at this stage. It is also considered that although the requirement to provide an element of affordable housing as outlined in Policy BSC3 has not been met the applicant's viability assessment has outlined that the development would not be viable with an element of affordable housing being required and therefore a reason to warrant an exception to this Policy.
- 9.78 Notwithstanding the findings of the Turley report the County Council has confirmed that it is developing and implementing active travel measures along key transport corridors in Bicester to facilitate and encourage walking and cycling. The County confirm that various measures are under development for the Kings End / Queens Avenue / Buckingham Road which requires a Section 106 contribution of £88,380 towards the funding of these measures as they pass the frontage of the proposed development. Despite stating that the proposed scheme would not be viable with any S106 monies being paid, the applicant has agreed to make a contribution of £46,880 towards the highway improvement measures as requested. This contribution will assist in mitigation against the fact that the development is promoted as a car free site.

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

- 10.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined against the provisions of the development plan unless material considerations indicate otherwise. The NPPF supports this position and adds that proposals that accord with an up-to-date development plan should be approved and those which do not should normally be refused unless outweighed by other material considerations.
- 10.2. The principle of the redevelopment of the site is considered acceptable. The design of the amended proposal is considered appropriate in terms of scale and materials, and the design of the building and its position within the plot would ensure that the development would not result in any loss of light, privacy or outlook currently enjoyed by local residents on the opposite side of Queens Avenue. The proposal is considered acceptable in terms of highway safety.
- 10.3. The current Magistrates Court building has historic significance in a local context and its demolition would have an impact on the streetscape, the character and appearance of the area and the setting of the Conservation Area. The demolition of the building would result in the loss a non-designated heritage asset; that said its demolition would not likely require planning permission and the use of the building as a Magistrates Court has now expired and an alternative use of the building / site is necessary.

- 10.4. At the time of drafting this report the LLFA had an objection to the proposal and further information had been requested. This additional drainage information has been provided and the further comments from the LLFA are awaited. On the basis that the LLFA confirm that the new information is acceptable it is considered that the development would not result in any adverse impact upon the area in terms of drainage / flooding.
- 10.5. This scale and type of development would normally require a S106 to be negotiated and attached to any planning permission granted to include an element of affordable housing. As outlined under Policy BSC3 the district council will need to be satisfied that such affordable housing is economically viable in terms of its ability to meet the need identified. As part of the supporting documents attached to the application the applicant has submitted a detailed viability assessment with the application. The viability assessment outlines the fact that the development would not be viable in the event that a S106 would be required. In considering this the Council's viability consultant, Turley's has reviewed the details and advises that the applicant is correct and as such there is no S106 to be attached to the development in the event that the application was to be approved. Notwithstanding this point the applicant has confirmed that a traffic mitigation contribution would be made to reduce the highway impact of the development and in particular as the development is promoted as a car free proposal.
- 10.6. Turning to other material considerations the Council is not presently able to demonstrate a 5 year land supply and there is therefore a clear and pressing need for new housing to be delivered in the district. In this case paragraph 11(d)(ii) of the NPPF, also known as the tilted balance, is engaged, which favours granting planning permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole.
- 10.7. The provision of 48 residential units on the site would align with the NPPF objective to significantly boost the supply of new housing and in the context of the Council not being able to demonstrate a 5 year land supply is to be afforded significant weight. There would also be some economic benefits associated with the development including the jobs through construction.
- 10.8. Overall, taken as a whole the harm arising from the demolition of the existing building is not considered to clearly and demonstrably outweigh the benefits of the scheme. It is therefore recommended that planning permission be granted.

## **11. RECOMMENDATION**

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

- i. RESOLUTION OF LEAD LOCAL FLOOD AUTHORITY OBJECTION;**
- ii. THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) AND**
- iii. THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND COMPENSATION ACT 1991, (AND ANY AMENDMENTS AS DEEMED NECESSARY):**

**FURTHER RECOMMENDATION: IF THE SECTION 106 AGREEMENT / UNDERTAKING IS NOT COMPLETED AND THE PERMISSION IS NOT ABLE TO BE ISSUED, AND, NO EXTENSION OF TIME HAS BEEN AGREED BETWEEN THE**

**PARTIES, IT IS FURTHER RECOMMENDED THAT THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT IS GIVEN DELEGATED AUTHORITY TO REFUSE THE APPLICATION FOR THE FOLLOWING REASON:**

1. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure required as a result of the development and necessary to make the impacts of the development acceptable in planning terms, to the detriment of both existing and proposed residents and contrary to Policy INF 1 of the adopted Cherwell Local Plan 2011- 2031, Government guidance within the NFFF and CDC Planning Obligations SPD 2018

**S106 HEADS OF TERMS**

As set out in the table attached as Appendix 1.

**CONDITIONS**

**Time Limit**

1. The development hereby permitted shall be begun before the expiration of three years from 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.

2. The development shall not be carried out otherwise than in complete accordance with the approved plans 20270\_PA\_17 Rev A, 20270\_PA\_18 Rev A, 20270\_PA\_19 Rev A, 20270\_PA\_20 Rev A, 20270\_PA\_21 Rev A, 20270\_PA\_22 Rev A, 20270\_PA\_23 Rev A, and 20270\_PA\_24 Rev A, received 07/03/2022 unless a non-material or minor material amendment is approved by the Local Planning Authority under the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

Reason: To clarify the permission and for the avoidance of doubt.

3. All site clearance (including the removal of any vegetation or works to hedgerows) should be timed so as to avoid the bird nesting season, this being during the months of March until July inclusive unless alternative provisions have been previously agreed in writing by the Local Planning Authority

Reason: To ensure that the development will conserve and enhance the natural environment and will not cause significant harm to any protected species or its habitat in accordance with the Government's aim to achieve sustainable development as set out in Section 15 of the National Planning Policy Framework.

4. Prior to, and within two months of, the commencement of the development, the site shall be thoroughly checked by a suitably qualified ecologist to ensure that no protected species, which could be harmed by the development, have moved on to the site since the previous surveys were carried out. Should any protected species be found during this check, full details of mitigation measures to prevent their harm shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved mitigation scheme.

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.

5. The development hereby permitted shall be carried out in accordance with the recommendations set out in Ecological Appraisal by Wharton dated 07 September 2020 unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect habitats and/or species of importance to nature conservation from significant harm in accordance with the Government's aim to achieve sustainable development as set out in Section 15 of the National Planning Policy Framework.

6. Prior to the first occupation of the development hereby permitted, written confirmation that the development achieves a water efficiency limit of 110 litres/person/day under Part G of the Building Regulations shall be submitted to and approved in writing by the Local Planning Authority.

Reason: Cherwell District is in an area of water stress, to mitigate the impacts of climate change and in the interests of sustainability, to comply with Policies ESD1 and ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance in the National Planning Policy Framework.

7. A colour scheme for the colouring of the external render shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of those works. Thereafter, and prior to the first occupation of the development, the render shall be finished in accordance with the approved colour scheme and retained as such thereafter.

Reason: In order to safeguard the visual amenities of the area in accordance with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996.

8. Prior to the development progressing above slab level, a Landscaping Scheme for the site shall be provided to and approved in writing by the Local Planning Authority

The Landscaping Scheme shall include:-

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc),

(b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,

(c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps.

All planting, seeding or turfing comprised in the approved Landscaping Scheme shall be carried out in the first planting and seeding seasons following the occupation of the building(s), or on the completion of the development, whichever is the sooner. All hard landscaping elements shall be provided prior to the first occupation of the building(s).



The planning and shall be maintained for a period of 5 years from the completion of the development. Any trees and/or shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.

Reason: To ensure that the agreed landscaping scheme is maintained over a reasonable period that will permit its establishment in the interests of visual amenity and to accord with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

9. Prior to the first occupation of the development hereby approved, a Residential Travel Plan, prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments (and a Travel Plan Statement setting out how this phase will contribute to the overall site wide Residential Travel Plan), shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.
10. Prior to the first occupation of the development hereby permitted, the cycle parking facilities as shown on approved plans 20270\_PA\_17 Rev A, and 20270\_PA\_18 Rev A, shall be provided on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities so provided shall thereafter be permanently retained and maintained for the parking of cycles in connection with the development.

Reason: In the interests of promoting sustainable transport modes in accordance with Government advice in the National Planning Policy Framework.

11. Prior to the commencement of the development hereby approved, full details of a drainage strategy for the entire site, detailing all on and off site drainage works required in relation to the development, including the prevention of drainage onto the public highway, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the drainage works shall be carried out and completed in accordance with the approved strategy, until which time no discharge of foul or surface water from the site shall be accepted into the public system.

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 in accordance with Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

12. Prior to the first occupation of the development hereby permitted, suitably located waste bins shall be provided outside the premises and retained for public use in accordance with details to be firstly submitted to an approved in writing by the Local Planning Authority.

Reason: In order that proper arrangements are made for the disposal of waste, and to ensure the creation of a satisfactory environment free from intrusive levels of litter in accordance with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

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

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

14. If a potential risk from contamination is identified as a result of the work carried out under condition 13, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

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

15. If contamination is found by undertaking the work carried out under condition 14, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

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

16. If remedial works have been identified in condition 15, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 18. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

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

17. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

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.

18. No development shall take place, including any works of demolition until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The statement shall provide for at a minimum:
- a) The parking of vehicles of site operatives and visitors;
  - b) The routeing of HGVs to and from the site;
  - c) Loading and unloading of plant and materials;
  - d) Storage of plant and materials used in constructing the development;
  - e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - f) Wheel washing facilities including type of operation (automated, water recycling etc) and road sweeping;
  - g) Measures to control the emission of dust and dirt during construction;
  - h) A scheme for recycling/ disposing of waste resulting from demolition and construction works;
  - i) Delivery, demolition and construction working hours;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason: To ensure the environment is protected during construction in accordance with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

**APPENDIX 1- Heads of Terms for Section 106 Agreement/undertaking**

<b>Planning obligation</b>			<b>Regulation 122 Assessment</b>
<b>Detail</b>	<b>Amounts (all to be Index linked)</b>	<b>Trigger points</b>	
Transport Strategy request to cover a new traffic free route and continuous footway	<b>£46,880.</b>	To be delegated to officers	<p><b>Necessary</b> - to ensure sustainable mode of transport and encourage and integrated into the development and made attractive to future users as a car free development.</p> <p><b>Directly related</b> - as these will benefit the future occupants of the site and encourage use of sustainable transport options in the locality.</p> <p><b>Fairly and reasonably related in scale and kind</b> – The contributions are in scale with the development and would be directly benefiting residents of the future development.</p>
S106 Monitoring Fees	<p><b>CDC - £500</b>  <b>Registration charge</b></p> <p><b>OCC TBC</b></p>		