

Case Officer: James Kirkham

Applicant: Mr Christopher McNally

Proposal: Erection of one detached dwelling and detached garage

Ward: Cropredy, Sibfords and Wroxton

Councillors: Cllr Chapman, Cllr Reynolds and Cllr Webb

Reason for Referral: Call-in request by Cllr Reynolds for the following reasons:

- Local concern and public interest
- Access problems
- Planning policy
- A similar previous submission on the site was referred to the Planning Committee.

Expiry Date: 19 July 2021

Committee Date: 11 August 2022

SUMMARY OF RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

UPDATE

The application was reported to the July Planning Committee. It was deferred in order to allow a Members' Site Inspection to take place. This will be undertaken prior to the Planning Committee.

The written update for the July Planning Committee noted the receipt of an additional representation. This was summarised in the update and officers advised that the issues raised did not require any changes to the recommendation.

No further representations have been received since the July Planning Committee Meeting.

1. APPLICATION SITE AND LOCALITY

- 1.1. The application relates to a parcel of mainly agricultural land located within the village of North Newington. There is a small, single storey building on the site that benefits from an industrial use (see relevant history below) allowed under permitted development; however, the remainder of the land is still considered to be an agricultural use. The site sits in an elevated position relative to the adjacent highway and properties to the north. A stone boundary wall runs along the boundary of the site adjacent to the Banbury Road and vehicular access is shown via The Pound to the west of the site.

2. CONSTRAINTS

- 2.1. The site is within the North Newington Conservation Area and the village's historic core which is considered of archaeological interest. There are a number of grade II listed buildings within the vicinity of the site; the nearest being The Roebuck (a former public house) to the east of the site and The Blinking Owl public House (known as Baker's Arms on listing description) to the north-west of the site. There are records of a number of protected and notable species (including species of bat and swifts) within the vicinity of the site.
- 2.2. There are Public Rights of Way (PRoW) (Footpath 315/11/10 runs along the western boundary of the site and Footpath 315/18/20 runs along the alignment of The Pound to the west of the site) within the vicinity of the site. The application site is within an area where the geology is known to contain naturally occurring elevated levels of arsenic and affected by radon gas, as is seen in many areas across the district.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

- 3.1. The application seeks planning permission for an 'L' shaped, two storey, 3-bedroom detached dwelling to be positioned on the southern side of the site, with detached garage/outbuilding to the west. The proposed dwelling and associated garage/outbuilding would be finished in natural stone under a natural slate roof. A parking area is shown on the submitted plans with access to the site is via the Pound to the west of the site.
- 3.2. This application follows an identical planning application under application reference 14/01816/F which was refused as it had not been demonstrated that the applicant benefited from a lawful vehicular access to the site via The Pound and as such it was considered the development may result in parking being displaced to the public highway compromising highway safety contrary to government guidance contained within the National Planning Policy Framework.

4. RELEVANT PLANNING HISTORY

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

Application: CHN.667/76
Refused
7 January 1977
Detached bungalow with double garage (outline)

Application refused for the following reasons:

- 1) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.
- 2) The proposed development would involve a very long means of access to the dwelling which would result in inconvenience in the serving of such a dwelling.
- 3) The access road to and from the site is inadequate to serve further development.

- 4) The proposed development would be likely to result in motor vehicles standing in the highway with consequent detriment to the safety and convenience of users of the public highway.

Application: CHN.687/77

Refused

27 February 1978

Detached bungalow with double garage (outline)

Application refused for the following reasons:

- 1) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.
- 2) That provision of vehicular access, visibility splays, an access drive and turning space would involve works which would be physically disruptive having regard to the levels of the site above the level of the public highway and the need to provide a satisfactory access gradient and such works would thereby be detrimental to the appearance and character of the village street.
- 3) That, having regard to the elevated nature of the site the proposed dwelling would be likely to be detrimental to the degree of privacy currently enjoyed by the occupiers of the existing dwellings to the north.

Application: CHN.268/81

Refused

18 May 1981

Erection of new three bedroom bungalow with garage and new vehicular access, drive and turning area.

Application refused for the following reasons:

- 1) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.
- 2) That provision of vehicular access, visibility splays, an access drive and turning space would involve works which would be physically disruptive having regard to the levels of the site above the level of the public highway and the need to provide a satisfactory access gradient and such works would thereby be detrimental to the appearance and character of the village street.
- 3) That the visibility onto the village road from the proposed access is inadequate and would thereby result in detriment to the safety and convenience of road users.
- 4) That, having regard to the elevated nature of the site the proposed dwelling would be likely to be detrimental to the degree of privacy currently enjoyed by the occupiers of the existing dwellings to the north.

Application: CHN.106/84

Refused

14 May 1984

Application for erection of new 3 bedroom bungalow with garage (outline)

Application refused for the following reasons:

- 1) That in the opinion of the Local Planning Authority the existing track by virtue of its sub-standard width, alignment and surface construction is inadequate to satisfactorily serve the proposed development and would result in inconvenience for service vehicles and personnel from public and private bodies who may have occasion to visit the premises.
- 2) That the proposed development would result in the intensification of the use of the sub-standard track where visibility on to the village road from the track is inadequate and would thereby result in the detriment to the safety and convenience of other road users.
- 3) An important element in the character and visual; amenities of villages lies in the existence of tracts of open land lying within the village street scene, and the proposal would constitute the loss of one of the few remaining areas of such land in North Newington to the detriment of the character of the village scene generally.

Application: 01/02095/OUT

Withdrawn

27 November 2001

Erection of 1 no. dwelling and new vehicular and pedestrian access (Outline)

Application: 02/01103/OUT

Refused

26 July 2002

Erection of 1 no. dwelling and new vehicular and pedestrian access (Outline)

Application refused for the following reasons:

- 1) The proposed development would be contrary to Policy G2 of the Oxfordshire Structure Plan and Policies H14, C22 and C30 of the adopted Cherwell Local Plan. The development of this site for one dwelling does not constitute infill development and by virtue of the loss of this elevated and open land, which is prominent in the street scene and Conservation Area, and the likely character and appearance of any dwelling, including the significant reduction in site levels, would result in development which is unsympathetic and detrimental to the character and appearance of the site and the street scene in general and would neither preserve nor enhance the character and appearance of the Conservation Area.
- 2) The unjustified loss of the front boundary wall from its original position in order to provide access to the site would be contrary to Policy C23 of the Cherwell Local Plan and would neither preserve or enhance the character and appearance of the Conservation Area.
- 3) The proposed access would be contrary to Policy T18 of the Oxfordshire Structure Plan and Policies TR2 and TR5 of the Cherwell Local Plan as it is

sub-standard in terms of visibility and the traffic generated by the proposal would result in a hazard and be detrimental to the safety of other road users.

Application: 14/01758/PAO
17 December 2014

Notification of Change of Use from agricultural to B8 (storage and distribution) under Class M of The Town and County Planning (General Permitted Development) (Amendment) (England) Order 2013 (as amended).

The above notification was submitted under permitted changes of use in The Town and Country Planning (General Permitted Development) (England) Order 2013 (as amended). As the building was less than 150 sqm in size, the applicant was only required to notify the council of their intent to implement a permitted change of use. It was stated that the use would commence on 17th October 2014

Application: 14/01816/F
Refused
10 September 2015
Erection of 1 No. detached dwelling and detached garage

Application refused for the following reason:

- 1) The Pound is a designated public Right of Way and crosses a second public Right of Way at the access point to the site and it has not been demonstrated that the applicant benefits from a lawful vehicular access to the site via The Pound. As such the development may result in parking being displaced to the public highway compromising highway safety contrary to government guidance contained within the National Planning Policy Framework.

5. PRE-APPLICATION DISCUSSIONS

- 5.1. No pre-application discussions have taken place with regard to this proposal.

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 (amend as appropriate). The final date for comments was **14 June 2021**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. 27 no. letters of objection (including a legal representation and statutory declarations) from local residents and none in support have been received during the application. The comments raised by third parties are summarised as follows:

- The site/applicant does not benefit from a lawful right of vehicle access along The Pound.
- Legal opinions have been submitted indicating that the applicant does not have a vehicular access right to the site and would be unsuccessful in claiming a prescriptive easement (a right through long term use). Furthermore, no application has been made by the applicant to the Land registry for a prescriptive easement to evidence their claimed use.
- It is a criminal offence to drive over a public right of way.

- Inappropriate access arrangement along the Pound; narrow track lacking in passing provision. Access from the Pound on to the main street is difficult to navigate and dangerous.
- Proposals would be to the detriment to the safety and amenity of users of the PRoWs which bound the site and run along The Pound.
- Access is unsuitable for construction vehicles.
- Poor access for waste collection vehicles accessing bins from the proposed dwelling.
- By virtue of its scale and massing and elevated position the proposed dwelling would be overly dominant and to the detriment of visual amenities of the village and heritage assets
- Harm to the character and appearance of the Conservation Area and the setting of Listed Buildings. A separate Heritage Statement has been submitted which was instructed by one of the objectors. This states that the proposed development would block, restrict and be dominant in the view of the Roebuck and it is evident that the setting of the Roebuck will be change. The openness of the proposed development plot contributes to the significance of the heritage asset and would harm the setting. It would also harm the setting of the non-designated brick barn and the character and appearance of the Conservation Area. It concludes the proposal would lead to the upper end of 'less than substantial harm' and would not be outweighed by the public benefits.
- The elevated position of the dwelling will make it very dominant.
- Loss of view of countryside
- Proposal lacks a Heritage Statement
- The open view afforded by the allotment gardens provides a visually important break in development that positively contributes to the character of the area, the conservation area and setting of listed buildings.
- Detrimental impacts on residential amenity through the potential for overlooking particularly having regard to the levels and loss of light. Also, harm to residential amenity through increased use of the access along The Pound if it is used for dwelling
- Potential detrimental impacts on existing retaining wall.
- Appropriate drainage required.
- Proposals lack any appropriate ecological impact assessment.
- Potential for disruption, nuisance and damage arising during any construction phase.
- Numerous other applications on the site have been refused.
- There is a record of planning enforcement on the site relating to storage which was dismissed at appeal
- Multiple errors on the application form.

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

7. RESPONSE TO CONSULTATION

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

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. NORTH NEWINGTON PARISH COUNCIL: **Objects**. Commenting on the following matters:

- The Parish Council strongly disputes the applicant's claims of right of access across The Pound, and that such access in their opinion has previously been done unlawfully. Further, they will explore with Oxfordshire County Council the merits of bringing a prosecution under the Road Traffic Act 1988.
- There has been very little evidence of regular use and access to the site in recent years.
- The Parish Council strongly objects to the development of the Allotment Gardens into residential use; reiterating objections made to the previous, unsuccessful application (14/01816/F), which they consider remain valid.
- The proposed development does not make a positive contribution to the character and appearance of a conservation area; causing an undue visual intrusion inconsistent with local character and harming the historic value of the landscape.
- The site represents an important open space close to the centre of the village. It is elevated above the road and will have a significant impact on the visual amenities of the area. Any building will dominate the environment and be overbearing, particularly in relationship to two neighbouring historic buildings.
- The Parish Council also supports the concerns raised by the North East Countryside Access Officer.

CONSULTEES

7.3. ARCHAEOLOGY: **No objection**. There are no archaeological constraints to this scheme.

7.4. BUILDING CONTROL: A Building Regulations application will be required.

7.5. CDC LAND DRAINAGE: No comments to make on drainage.

7.6. CONSERVATION: **No objections subject to conditions** in relation to construction and materials. Commenting:

"The principle of a dwelling in this location has been previously accepted and the earlier proposals were concluded not to result in an unacceptable level of heritage harm, consequently no heritage reason for refusal was given. However, further consideration has been given to the impact of the proposals.

As previously highlighted, it is accepted that due to the location any new building will be visually prominent on the higher ground as you enter the conservation area along the Banbury Road. This land is also adjacent to The Roebuck to the east and Bakers Arms to the north both of which are Grade II Listed Buildings. As a result of the prominent position any new building on this site will also unavoidably alter the appearance of the street scene, but it is considered that the impact is softened by

the fact that the area of the land immediately adjacent to the road is to remain undeveloped.

It is further acknowledged that the appearance of the conservation area in this location may be altered in such a way that it will result in some harm. This harm is however considered to be minor, at the lower end of less than substantial and does not constitute unacceptable harm to the overall character of the conservation area.

In addition the resulting changes to the street scene will inevitably alter the setting of The Roebuck and to a much lesser extent Bakers Arms Listed Buildings. It is considered that the significance of these buildings lies in their architectural character and any historic fabric that remains, therefore development within their setting is deemed to have a limited effect on this significance. It was previously concluded that the proposal would not result in heritage harm and there has been no material change that would contradict this conclusion. However, it is considered to be inevitable that the proposed development will result in some minor harm to the heritage assets. The NPPF requires that this harm should be weighed against the public benefit.

- 7.7. ECOLOGY: Originally raised concerns regarding absence of a Preliminary Ecological Appraisal (PEA). Following receipt of additional information and photos states that a walkover survey would be best practice here to understand the value of the site to secure a net gain in biodiversity. There is a possibility of reptiles and badgers using the site. However, it appears as though the trees are being retained and whilst the proposal will lead to the loss of some hedgerow the timing of works could be conditioned to ensure nesting birds are not harmed. A condition could also be attached to ensure a net gain in biodiversity and this will need to consider the loss of existing features. As part of the land will remain undeveloped (blue line), reptile presence could be assumed and a mitigation strategy to ensure none are harmed during any works and able to utilise the other parts of the land within the applicants ownership (which should be enhanced for them) could be conditioned. A workshop on site is to be demolished and following the receipt of photographs the Councils Ecologists has been confirmed this would not be suitable for bats. In short the Ecologist considers that the lack of information falls into 'not best practice' as opposed to a reason for refusal on its own but necessitates the attachment of some more involved pre-commencement conditions.
- 7.8. ENVIRONMENTAL HEALTH: **No objections subject to conditions**, assessing the potential for land contamination and further in respect of securing Electrical Vehicle (EV) Charging infrastructure.
- 7.9. OCC HIGHWAYS: **No objections** subject to conditions requiring parking and the provision of a Construction Traffic Management Plan, and for no other means of access to be formed or used other than the access/s approved. Notes that the Highway Engineer did not object to the earlier refusal on the site and then states:

In this latest application, the applicant claims to have a lawful right to vehicular access along The Pound and I therefore accept this is the case. The Pound serves other dwellings – I identified two with vehicles during my site visit but I understand there may be five properties – so there will be an increase in total movements compared to what is witnessed at present. This has to be considered against the movements that might be expected to result from the lawful use of the land. The existing junction of The Pound with Main Street has reasonably good visibility so even if there were to be a slight intensification of use, this would not be a reason for objection.

The red line area does not abut Banbury Road, so pedestrian access (other than via The Pound) will be taken along Public Right of Way 315/11/10, which comes out opposite Park Lane. If it is demonstrated in the future that the applicant (or future resident) does not have a right of vehicular access along The Pound, then they will wish to park their vehicles close to the pedestrian access.

Banbury Road is not suitable for parking and there is no reason to expect this would happen, given that there is on-street parking available along Park Lane and in the layby opposite The Blinking Owl. Additional on-street parking is possible further to the west along Main Street.

Therefore, the LHA considers that it would not be possible to demonstrate that the displaced parking from a single dwelling will compromise highway safety. Should planning permission be granted, construction of the new dwelling will present severe challenges. A Construction Traffic Management Plan is requested by condition so that the applicant may demonstrate how, in particular, materials and plant are to be safely transported along The Pound.

7.10. RAMBLERS ASSOCIATION: No comments received.

7.11. RIGHTS OF WAY OFFICER (OCC): Comments

North Newington Footpath 11 runs along the Western boundary of the development site and the proposed access to this site would cross this footpath. North Newington Footpath 18 runs within the red line area of the development. The proposed access for the development is along this footpath track. Both of these Public Rights of Way only provide public access on foot. Anyone taking vehicles along or across The Pound will be doing so via a private vehicular right. It would be an unlawful act to take vehicular access along The Pound without private vehicular rights.

North Newington Footpath 18 is outside the landownership of the applicant, so they should be able to provide evidence to the Local Planning Authority that they hold private vehicular rights over this track.

In addition to the legal question of vehicular access to the site I am concerned that the development would significantly increase vehicular movements along the footpath. The footpath is a narrow, single lane track with a blind bend on a steep incline. There are no passing spaces to allow vehicles to pass one another, so any vehicular meetings would require at least one to reverse. This is a popular and well used footpath and the added vehicular movements are likely to cause increased conflict between walkers and vehicles. I have particular concerns about how the applicant intends to manage this during the construction period if planning permission was approved as The Pound would be unsuitable for any large construction or material delivery vehicles.

Finally, Footpath 18 is currently surfaced for the majority of its length. However, there is a short section of unsurfaced grass area. This would need to be brought up to a standard that could sustain regular movement of road vehicles. As the Highways Authority, Oxfordshire County Council's Countryside Access Team would need to be consulted in writing prior to any surfacing works taking place and a standard for materials and construction agreed prior to works starting. Oxfordshire County Council's Countryside Access Team would not accept a tarmac surface at this location and the applicant would be expected to maintain a surface installed to a safe and useable standard in the future.

7.12. Further notes that if planning permission was approved, then standard measures in respect of protecting and maintain the PRow would also apply.

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)

- PSD1: Presumption in Favour of Sustainable Development
- Villages 1: Village Categorisation
- BSC1: District Wide Housing Distribution
- ESD1: Mitigating and Adapting to Climate Change
- ESD3: Sustainable Construction
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13 – Local landscape protection and enhancement
- ESD15: The Character of the built and historic environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C23: Retention of features contributing to character or appearance of a conservation area.
- C28: Layout, design and external appearance of new development
- C30: Design control
- C33: Protection of important gaps of undeveloped land
- ENV12 – Development on contaminated land

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Circular 06/2005 (Biodiversity and Geological Conservation)
- Cherwell residential Design Guide SPD (2018)
- North Newington Conservation Area Appraisal 2014

9. APPRAISAL

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

- Principle of development
- Design, and impact on the character of the area including heritage
- Highways
- Impact on Neighbour Amenity
- Ecology & Biodiversity
- Other matters

Principle of Development

Policy Context

- 9.2. Government guidance contained within the NPPF 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. In respect of new residential development there is a requirement for the provision of new housing of the right type in the right location at the right time, and that development should contribute to protecting and enhancing our natural, built and historic environment, as well as fostering a well-designed and safe built environment. Paragraph 8 of the NPPF sets out the Government's view of what sustainable development means in practice for the planning system. It is clear from this that sustainability concerns more than just proximity to facilities, it clearly also relates to ensuring the physical and natural environment is conserved and enhanced as well as contributing to building a strong economy, and in the context of this proposal this would include the preservation and enhancement of the historic environment. These aims are echoed within the policies of the CLP 2015 which looks to support sustainable development.
- 9.3. Paragraph 11 states that planning decisions should apply the presumption in favour of sustainable development. For decision making this means:
- approving development proposals that accord with an 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:
 - i. 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
 - ii. 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.
- 9.4. Footnote 8 clarifies that for applications involving housing, housing policies will be out of date when the Council cannot demonstrate a 5 year land supply. Cherwell's position on five-year housing land supply is set out in the 2021 Annual Monitoring Report (AMR). This highlights that despite a strong record of delivery since 2015, there is a land supply position of 3.5 years for the period 2022-2027. According to the AMR, an additional 2,255 homes would need to be shown to be deliverable within the current 2022-2027 five-year period to achieve a five-year supply as required by the NPPF. Therefore, the relevant housing policies are out of date and are reduced in weight.
- 9.5. However, paragraph 12 of the NPPF advises 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.
- 9.6. The Development Plan in Cherwell consists of the CLP 2015 and the Saved Policies of the Cherwell Local Plan 1996 and has a strong urban focus. Therefore, the rural housing strategy for the rest of the district is more constrained and seeks to reduce the level of growth in the district's villages particularly the smaller villages with limited services and facilities and public transport.
- 9.7. Policy Villages 1 of the CLP 2015 is the most relevant policy to this application and groups villages into three separate categories (A, B and C). North Newington is

recognised as a Category C village which are considered to be the least sustainable settlements in the District's rural areas (which is highlighted by the village's lack of community facilities) and as such new residential development is restricted to new infill development and conversions.

Assessment

- 9.8. The application site has a relatively long planning history. The latest application (14/01816/F refers) was considered under the CLP 2015 so the local planning policy context remains similar albeit the Council cannot currently demonstrate a 5 year land supply. This is therefore a significant material consideration.
- 9.9. Under Policy Villages 1 North Newington is a Category C village where development is restricted to conversion and infill development within the built limits. The application site has been considered in previous applications to be in the built-up limits of the village and there are not considered to be any material changes which would result in a different assessment being made in this regard.
- 9.10. The CLP 2015 states '*Infilling refers to the development of a small gap in an otherwise continuous built-up frontage*' (Para C.264). The application site does represent a gap within the village however the built form is different on either side of the site. The existing gap along the road frontage is approximately 75m wide although the applicant does not own all of the land forming the gap. In the 2014 application (which was determined after the adoption of the current Local Plan) Officers previously considered that although the proposal would not wholly comply with the definition of infilling due to the size of the gap and the disjointed frontage, given that the proposal does respect the linear development along the Banbury Road and is a gap between existing buildings, that it would be difficult to defend a reason for refusal at appeal based on non-compliance with the Council's definition of infilling. This is still considered to be applicable in the current application. Therefore whilst there may be some minor conflict with Policy Villages 1 of the CLP 2015, this is a finely balanced judgement, and furthermore this policy is considered to be 'out of date' given the absence of a 5 year land supply. In addition, the scale of development proposed is also in keeping with the scale of development directed to North Newington for a single dwelling.
- 9.11. Overall, given the above, the general principle of accommodating a single dwelling on the site is therefore considered to be acceptable subject to other considerations which are discussed below.

Design, and impact on the character of the area, including Heritage impact

Policy Context

- 9.12. Government guidance contained within the NPPF states that good design is a key aspect of sustainable development and is indivisible from good planning, and planning 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.
- 9.13. These aims are echoed within Policy ESD15 of the CLP 2015 which looks to promote and support development of a high standard which contributes positively to an area's character and identity by creating or reinforcing local distinctiveness, stating that new development proposals should:
- Contribute positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography, including

skylines, valley floors, significant trees, historic boundaries, landmarks, features or views.

- Respect the traditional pattern routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly defined active public frontages.”

9.14. Policy ESD13 of the CLP 2015 states that: *“Development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not be permitted if they would:*

- *Be inconsistent with local character;*
- *Harm the setting of settlements, buildings, structures or other landmark features;”*

9.15. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved Policy C30 of CLP 1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity. Saved Policy C33 states that the council will seek to retain any undeveloped gap of land which is important in preserving the character of a loose-knit settlement structure or in maintaining the proper setting for a listed building or in preserving a view or feature of recognised amenity or historical value.

9.16. The Council’s Residential Design Guide SPD seeks to ensure that new development responds to the traditional settlement pattern, character and context of a village. This includes the use of continuous building forms along principal routes, the use of traditional building materials and detailing and form that respond to the local vernacular.

9.17. In the current case the application site also is located in North Newington Conservation Area and within the setting of a number of listed buildings. These are defined as designated heritage assets by the NPPF. The NPPF states assets should be conserved in a manner proportionate to their significance and that great weight should be given to their conservation. It states any harm should require clear and convincing justification. Paragraph 202 states where development will lead to ‘less than substantial harm’ to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the scheme.

9.18. The Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting and special attention is given to the desirability of preserving and enhancing the character and appearance of Conservation Areas.

Assessment

9.19. The proposed development is identical to the earlier refused application on the site in 2014. Whilst the 2014 application was refused, the proposal’s impact on the Conservation Area, setting of nearby listed buildings and the general character of the area was considered to be acceptable by the Planning Committee and did not constitute a reason for refusal. This is a significant material consideration when considering the merits of the case.

- 9.20. The application site consists of a gap in the built frontage within the village. Whilst in general policy terms the development of the site may be appropriate, when deciding if a 'gap' is suitable for new development consideration must also be given to the development form and the contribution the gap makes to the character and appearance of the locality and heritage assets as outlined in saved Policy C33 of the CLP 1996. The planning history highlights the importance of this site as a gap within the village; however, this does not rule out any development on the site, and a judgement needs to be made as to whether the development respects the character and appearance of the area and designated heritage assets.
- 9.21. The current proposal is for a dwelling to be located towards the southeast corner of the site adjacent to the neighbouring property Stonecroft. Its set back position and siting on the plot help to preserve the openness of much of the frontage of the plot and the positive contribution that this openness provides to this part of the Conservation Area. The red line site area was amended during the course of the 2014 application to restrict the extent of the application site and to deliberately exclude a large portion of the open land that fronts the Banbury Road. This remains the case in the current application. This would ensure that any future occupier is unable to use the land at the front of the site for domestic purposes and prevent the erection of ancillary domestic buildings on that parcel of land. This helps to ensure that part of the open character and feel of the village is retained in this location albeit the largely agricultural character of the plot would be lost given the change of use of the remainder of the parcel of land.
- 9.22. The site is located on considerably higher ground than the adjacent Banbury Road with an approximately 1.5 to 2 metre high wall adjacent to the pavement. The land continues to rise in the site and results in the site being between 3 metres (in the east) to approximately 6 metres (in the western part of the site) higher than the adjacent footway. This would increase the prominence of the dwelling in the street scene; however, the set back and design of the dwelling help to reduce the prominence of the building. Furthermore, given the topography of the village it is not unusual for dwellings to be set above or below the level of the adjacent road. Concerns have been raised that the street scene elevations may not be accurate in relation to showing the development in relation to the height of the adjacent buildings. Full details of the finished levels of the site in relation to the ridge heights of the surrounding buildings could be controlled through condition.
- 9.23. The siting of the dwelling is considered to respect the linear form of the village and the detailed design and form of the dwelling is considered to be acceptable and would be in keeping with the local vernacular with the use of local stone and slate roof. It would provide a frontage to the east which would address the Banbury Road when approaching the village from the south. Full details of the materials and detailing can be secured by planning condition.
- 9.24. Views of the site would also be available from the public footpath to the south west of the site running through the open countryside. It is considered without appropriate landscaping the proposed dwelling may appear rather stark in these views. It is therefore recommended that landscaping and boundary treatment conditions be applied alongside removal of permitted development rights.
- 9.25. Concerns have also been raised regarding the impact of the development on the setting of the nearby Listed Buildings including The Roebuck to the east of the site on the opposite side of Banbury Road. This is a former historic public house and forms an important building at the entrance of the historic core of the village. The proposed development will be seen in the context of this building; however, it is considered the siting of the dwelling in the plot and the retention of the area of open land to the frontage would help to mitigate the extent of harm to the setting of the

building and would not significantly challenge the landmark status of The Roebuck. Whilst the Roebuck may have historically enjoyed a more open countryside setting at the entrance to the village this has been diminished and the setting of the building is now seen in the context of other built form within the village which the proposed development would form part of. It is therefore not considered that the proposal would significantly impinge on the setting of this building. The proposal is not considered to result in any harm to the setting of other listed buildings in the locality given their location and the scale of the proposal.

- 9.26. The Conservation Officer has raised no objection to the proposal after giving consideration to the submitted Heritage Assessment from an objector. In conclusion there is considered to be some minor 'less than substantial harm' caused to the character and appearance of the Conservation Area and setting of The Roebuck. However, this is considered to be limited and at the lower end of the spectrum of harm. In such cases the NPPF advises that this harm needs to be weighed against the public benefits of the scheme whilst acknowledging the statutory duties to give considerable importance to any harm to heritage assets. In this case there would be a modest economic benefit associated with the construction of the dwelling and the jobs this would provide. There would also be social benefits to providing a new dwelling in an area where there is a shortfall in housing supply within the built limits of the settlement. Taking these matters together, and given the limited harm, officers consider that the benefits of the scheme outweigh the limited harm to the designated heritage assets.

Conclusion

- 9.27. The scheme is identical to the 2014 application which was considered to be acceptable in these respects. Overall, for the reasons set out above, it is considered that the proposed dwelling and garage would be acceptable in regard to the character and appearance of Conservation Area and the setting of the nearby listed buildings. The development would therefore comply with Policies ESD15 of the CLP 2015, Saved Policies C28, C30 and C33 of the CLP 1996 and Government guidance contained within the NPPF.

Highways and parking

Policy Context

- 9.28. Both Policies ESD15 and SLE4 of the CLP 2015 reflect the provisions and aims of the NPPF. Policy ESD15 of the CLP 2015 states that: "*New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work*"; whilst Policy SLE4 states that: "*All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported*".
- 9.29. Paragraph 108 of the NPPF states that in assessing development proposals it should be ensured that safe and suitable access to the site can be achieved for all users. It goes on to state that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 9.30. Driving a vehicle across a public Right of Way is an offence under the Road Traffic Act 1988 if the person does not have a private vehicular right to use the route or doesn't have lawful authority to do so. If this is the case, the police could choose to prosecute an individual therefore preventing them from using the access and in turn, preventing the required parking and manoeuvring areas to be provided for a dwelling. This is a material planning consideration in that planning permission could

be granted for a dwelling without the benefit of adequate vehicular access and associated of street parking may result in highway safety issues as a result of this displaced parking.

- 9.31. Rights of vehicular access are commonly shown on deeds or can be gained through what is referred to as a prescriptive use. A prescriptive use is where lawful access is gained via long term use of the access. In the case of an access across a public Right of Way a period of 20 years or more would constitute a long-term use.

Assessment

- 9.32. The application site, denoted by the red line, includes the land where the proposed dwelling is situated and also the length of The Pound which is a narrow access track to the west of the site linking back to Main Street. The ownership of The Pound is unknown and therefore the applicants have served the relevant ownership certificate including placing an advert in the press. The application drawings show the dwelling served with vehicular access from The Pound to a parking area and garage on the site.

- 9.33. A public right of way runs along The Pound and another crosses adjacent to the site entrance linking Banbury Road to the open fields to the south. Both of these are for access on foot and the County Public Rights of Way Officer (ROW officer) state that anyone taking vehicles along or across The Pound will be doing so via a private vehicular right and it would be an unlawful act to take vehicular access along The Pound without private vehicular rights. The Pound also provides existing vehicular access to a number of dwellings.

- 9.34. The 2014 application, which is identical to the current scheme, was refused on site for the following reason:

1) The Pound is a designated public Right of Way and crosses a second public Right of Way at the access point to the site and it has not been demonstrated that the applicant benefits from a lawful vehicular access to the site via The Pound. As such the development may result in parking being displaced to the public highway compromising highway safety contrary to government guidance contained within the National Planning Policy Framework.

- 9.35. In the current application there is an ongoing dispute between the existing residents and the applicant over whether the applicant has vehicular access rights over The Pound. The applicant claims that he has acquired a vehicular right to use 'the Pound' to access the application site through a prescriptive easement by using the access for in excess of 20 years. However, this has not been established through the Land Registry or through any other formal legal process and as such has to remain just an assertion on the applicant's part and the Council is in no position to verify this. In any event the Council's Legal Services team advises that even if a right has been acquired it is far from certain that such a right can be used to access a new dwelling as opposed to the established use of the site over the last 20 years. Legal opinions have also been submitted from the objectors which raise queries over the applicant's evidence of use and also highlight that even were a prescriptive easement to be established by the applicant this may not extend to the use of the access for a dwelling and construction. It is not the role of the planning system to determine whether the applicant has vehicular rights of access over The Pound and this falls outside of the planning system in other legislation. However, in the earlier application, the Council considered that without such assurances that the applicant can use the access, other planning harm was likely to arise in the form of on-street parking in the locality which would be detrimental to highway safety.

- 9.36. It is also important to note that planning permission would not override other legal issues that may arise from the development, such as unlawful use of the access or restrictive covenants, and these are enforceable by other parties outside of the planning system and could ultimately prevent the development from proceeding even were planning permission to be granted.
- 9.37. In the current application the Local Highway Authority (LHA) has raised no objection to the proposal and notes whilst the proposal may lead to an increase in vehicles using The Pound (if the applicant has legal rights to use it) they do not consider this would result in a reason to object to the application and consider the visibility at the access to be acceptable. The ROW officer has raised some concerns over the potential conflict between users of the footpath and additional vehicles using The Pound given the narrow nature of the lane however this remains the same as the earlier application on the site and was not considered to form a reason for refusal. The applicant has also stated that the planning history of the site allows for some B8 use of the site which would mean a greater number of vehicles could utilise the access. However, it is unclear whether this has ever taken place and, given the doubts over the legal rights of the access, the very limited size of the building in question and the condition of the buildings, this is not considered to carry any significant weight in the consideration of these issues.
- 9.38. In the current application the LHA also advises: *If it is demonstrated in the future that the applicant (or future resident) does not have a right of vehicular access along The Pound, then they will wish to park their vehicles close to the pedestrian access. Banbury Road is not suitable for parking and there is no reason to expect this would happen, given that there is on-street parking available along Park Lane and in the layby opposite The Blinking Owl. Additional on-street parking is possible further to the west along Main Street. Therefore, the LHA considers that it would not be possible to demonstrate that the displaced parking from a single dwelling will compromise highway safety.*
- 9.39. Therefore, in this case even if the applicant is not able to use The Pound to access the site to provide off-street parking for the dwelling, the LHA considers that future occupants would be able to park on the street without causing a highway safety concern that would warrant an objection from the LHA. It is noted that there is already on street parking in the village for a number of dwellings and this is not unusual in historic villages. If a right of access is not available the future occupants are likely to park on either Park Lane or Main Street and access the site using the public rights of way. To discourage residents from parking on the Banbury Road immediately to the east of the site it is recommended that a condition be imposed to provide full details of boundary enclosures and remove permitted development rights for new gates to be installed. This would ensure that the Council could control that there was no pedestrian access from Banbury Road to the front of the site.
- 9.40. The fact that the LHA has now stated that they would not object to the scheme, even if on site parking was not available is a materially different position to the 2014 application. Whilst this might not be ideal, given the lack of objection from the LHA on highway safety grounds, Officers do not consider that a reason for refusal on highway safety grounds could be sustained at appeal and therefore the earlier reason for refusal is considered to be overcome.
- 9.41. The LHA has requested conditions for a Construction Traffic Management Plan (CTMP) which could be controlled through condition and would be required prior to any works commencing. If the applicant is not able to use The Pound as an access, they would need to provide alternative arrangements to ensure the construction period did not result in significant highway safety issues. The LHA has also requested a condition that the parking and turning areas be provided on site

however given their conclusions regarding the lack of necessity for on-site parking, this is not considered to meet the relevant planning test for planning conditions of being necessary to make the development acceptable in planning terms.

- 9.42. Notwithstanding the above, were the applicant to demonstrate rights to use the access and proceeded to use this lawfully for a dwelling a number of works would be needed to The Pound such as providing a surface to the full length of the access closest to the site which is currently laid to grass. This could be controlled by condition to ensure it is appropriate to the character and appearance of the area and the public right of way. The land is within the red line of the application site and whilst the applicant may not own it, they would need to get separate legal advice over what other consents, extraneous to planning, they would need to undertake these works.

Conclusion

- 9.43. Whether the applicant has vehicular access rights over The Pound to serve a new dwelling is uncertain and contrary assertions have been put forward by the applicant and the objectors. However, notwithstanding this the LHA has stated that even without designated off-street parking to serve the dwelling, it is satisfied that the additional parking from a single dwelling could be accommodated on the existing streets without causing significant highway safety concerns. On balance, Officers agree with this assessment and therefore the development is considered to be acceptable in highway and parking terms and comply with Policy SLE4 of the CLP 2015 and Government advice in the NPPF.

Impact on Neighbour Amenity

Policy Context

- 9.44. Saved Policy C30 of the CLP 1996 requires that new developments provide standards of amenity and privacy acceptable to the local planning authority. Policy ESD15 of the CLP 2015 states that new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space.

Assessment

- 9.45. The application is identical to the earlier refused application on the site which was considered to be acceptable in this regard and there have not been any material changes in circumstances which would warrant a different conclusion being reached in the Officer's assessment.
- 9.46. The proposal would impact on some views from the properties on the opposite side of Banbury Road and given its elevated position these impacts would be greater. Whilst there would undoubtedly be an impact on these properties' amenity, given the distance between these properties and the proposal, the fact the proposal would be separated by a public road and the existing relatively tight interrelationship between the existing properties to the east of Banbury Road; it is not considered that the increase in overlooking, loss of privacy or loss of outlook to these properties would be significant to justify refusal of the application.
- 9.47. Stonecroft is a bungalow located to the south of the application site. It has a blank side elevation facing towards the application site and is separated by a strip of third party land. Given the siting and scale of the proposed dwelling and its relationship with this property it is not considered to result in any significant loss of outlook or light to this property. There are some rooflights proposed serving a first floor bedroom which would provide views over the rear garden of this property however

these would be located approximately 16 metres from the boundary and face onto the side boundary of the site and therefore is considered to be a sufficient distance to ensure there is not significantly harmful levels of overlooking.

Conclusion

- 9.48. Officers consider that the development as proposed would be an acceptable distance from any properties in order to avoid a loss of amenity or privacy, in accordance with the above Policies.

Ecology & Biodiversity

Policy Context

- 9.49. 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 where they are justified on a site which may affect habitat or species of known ecological value.
- 9.50. The NPPF states that when determining planning applications, local planning authorities (LPAs) should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.51. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that LPAs should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
- 9.52. There are also Legislative requirements set out in The Conservation of Habitats and Species Regulations 2017 which must be taken into account in considering development proposals where habitats or species might be encountered.

Assessment

- 9.53. The current application is not accompanied by an ecological survey. The site is currently overgrown however it is understood that the site was cleared in 2021 by the applicant.
- 9.54. The Council's Ecologist (CE) originally recommended that the applicant undertook a Preliminary Ecological Appraisal (PEA) for the site to include checks for badgers and reptiles as well as priority species. They also noted that the site was located in the amber zone for Great Crested Newts on the District Licencing impact maps. Following these initial comments, the applicants raised concerns that they had not be required to submit an appraisal in the 2014 which was considered to be acceptable on ecological grounds by the CE.
- 9.55. Having considered the matter further and having regard to the current nature of the site, whilst considering that a PEA would be best practice the CE considers that the timings of the work to ensure nesting birds are not harmed could be conditioned. The CE also considers that a full biodiversity enhancement scheme could be conditioned although it would need to assume the current value of the area is lost. The CE also notes that, given the land to the front of the site (blue line) would be retained undeveloped and is in the same ownership as the applicant reptile

presence could be assumed and a mitigation strategy to ensure they are harmed during any works and are able to utilise other parts of the land could be conditioned.

- 9.56. The CE had raised some concerns over the impact on bats given the loss of buildings however having now considered the nature of the buildings, which would be lost as part of the development (corrugated clad, very shallow roof pitch) does not consider that they are suitable for roosting bats.
- 9.57. Overall, the CE now advises that in their assessment the lack of survey in this case falls into the category of 'not best practice' as opposed to a reason for refusal and planning conditions could be used to mitigate the impacts of the development. The proposal is therefore considered to comply with Policy ESD10 of the CLP 2015 and Government advice in the NPPF.

Other matters

- 9.58. The Environment Agency's flood maps indicate that the site is not within a higher risk flood zone where residential development is acceptable in principle and given the limited scale of the proposal the drainage details would be considered under building regulations.
- 9.59. The scheme includes the provision of a new dwelling and therefore the reduced water usage requirement under Policy ESD3 of the CLP 2015 should be secured by condition.
- 9.60. The Council's Environmental Protection Officer has requested that ground investigation be undertaken to identify any contamination on the site and remedial measures that may be required to make it suitable for residential use. These can be secured through conditions. They have also requested that EV charging points be installed to serve the dwelling however given the doubt over whether access is attainable for a vehicle along The Pound and also the fact these matters are now being covered by building regulations this is not considered to be necessary.
- 9.61. A number of statements have been made regarding the past actions of the applicant including the unlawful use of the site and the welfare of animals kept on the site. However, these are not material to the consideration of the application which needs to be assessed on its planning merits.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 10.2. The Council cannot demonstrate a 5 year land supply and therefore the most important policies for determining the application are considered to be out of date. Officers do not consider that heritage grounds form a clear reason for refusal and as such paragraph 11d(ii) of the NPPF is engaged which means granting permission unless any adverse impact would significantly and demonstrably outweigh the benefits.
- 10.3. In this case there is considered to be minor conflict with Policy Villages 1; however, the scale of the development is considered to be appropriate to the settlement and is well related to the built form of the village. There would be some minor 'less than substantial harm' to the designated heritage assets; however, as outlined above this is considered to be outweighed by the benefits of the scheme. The proposal's

impact on residential amenity and ecology is considered to be acceptable and can be controlled through condition. In regard to highway matters, whilst the applicant has not conclusively evidenced that they have a right of vehicle access over The Pound to serve a dwelling, the LHA has advised even without off-street parking the proposals it would not object on highway safety grounds. Therefore, the displaced parking is not considered to justify the refusal of the application .

- 10.4. The scheme would lead to some modest economic benefits and would provide a new house which would make a small contribution to the shortfall in the district.
- 10.5. Furthermore, the scheme is identical to an earlier refused application on the site in 2014, which was only refused given concerns over the rights of access and displaced parking. In light of the comments from the LHA these matters are considered to be overcome.
- 10.6. Taking these matters together the adverse impacts of the scheme are not considered to significantly and demonstrably outweigh the benefits of the scheme. It is therefore recommended that planning permission be granted.

11. RECOMMENDATION

THAT PERMISSION IS PERMITTED, WITH THE FOLLOWING CONDITIONS:

1. The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this consent.

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

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the application form and drawings numbered 14 21 07 C, 14 21 S01, 14 21 05 D, 14 21 06 and 14 21 08 A.

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

3. 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.

4. If a potential risk from contamination is identified as a result of the work carried out under condition 3, 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.

5. If contamination is found by undertaking the work carried out under condition 4, 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.

6. If remedial works have been identified in condition 5, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 5. 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.

7. No development shall commence unless and until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in strict accordance with the approved CTMP.

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

8. No development shall commence unless and until an Ecological Appraisal with any mitigation and protection strategies required as a result of the findings along with a biodiversity enhancement scheme demonstrating a net gain in biodiversity on the

site has been submitted and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in strict accordance with the approved details in a timetable to outlined within the approved document.

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.

9. 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 the National Planning Policy Framework.

10. No development shall commence above slab level unless and until a stone sample panel (minimum 1m² in size) has been constructed on site in natural stone, which shall be inspected and approved in writing by the Local Planning Authority. Thereafter, the external walls of the dwelling shall be laid, dressed, coursed and pointed in strict accordance with the approved stone sample panel.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply 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.

11. No development shall commence above slab level unless and until samples of the proposed roof slate for the dwelling (not fewer than 3) have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply 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.

12. Notwithstanding the details shown on the approved plans, further details of the architectural detailing of the exterior of the dwelling, including the design, materials and colour/finish of the windows and doors and their lintels and cills (including details at a scale of 1:10), and the eaves and verge treatment, shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the dwellings above slab level. The development shall not be carried out other than in accordance with the approved details and shall be retained as such thereafter.

Reason - To ensure that the development is constructed and finished in materials which are in harmony with the building materials used in the locality and to comply 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.

13. All rooflights shall be conservation grade rooflights that fit flush with the plane of the roof.

Reason - To ensure the satisfactory appearance of the completed development and to comply 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.

14. Notwithstanding the provisions of Classes A to E (inc.) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, the approved dwelling(s) shall not be extended or altered without the grant of further specific planning permission from the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the amenities of the neighbouring properties and heritage assets in accordance with Policy ESD15 of the Cherwell Local Plan 2011–2031 Part 1, saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

15. Notwithstanding the provisions of Classes A to B (inc.) of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and its subsequent amendments, no gates, wall or fences shall be altered or erected and no new means of access shall be created without the grant of further specific planning permission from the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard highway safety and heritage assets in accordance with Policies SLE4 and ESD15 of the Cherwell Local Plan 2011–2031 Part 1, saved Policies C28 and C30 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

16. Notwithstanding the details on the approved plans and prior to the commencement of the development hereby approved, a plan showing full details of the finished floor levels and ridge height for the dwelling and finished levels of the site in relation to existing ground levels at the site and surrounding land and the eaves and ridge height of the surrounding properties shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in strict accordance with the approved levels plan.

Reason - To ensure that the development is constructed in harmony with the surrounding buildings and heritage assets and to comply 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.

Planning note: The levels shall be expressed as above ordnance datum.

17. Notwithstanding the details on the approved plan, prior to the occupation of the dwelling hereby approved full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority. This shall demonstrate there will be no pedestrian access to Banbury Road from the frontage of the site. Thereafter, the approved means of enclosure shall be erected in accordance with the approved details, prior to the first occupation of the dwelling and thereafter retained and not altered from the approved

specification.

Reason - To ensure the satisfactory appearance of the completed development and to discourage parking on the frontage of the site on Banbury Road and to comply with Policy ESD15 of the Cherwell Local Plan 2011–2031 Part 1, Policies C28 and C30 of the adopted Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

18. A scheme for landscaping the site shall be provided to and approved in writing by the Local Planning Authority which 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 and details of protective measures during construction.
 - (c) details of the hard landscaping including hard surface areas, pavements, pedestrian areas and steps.

Such details shall be provided prior to the development commencing or such alternative time frame as agreed in writing by the developer and the Local Planning Authority. The hard landscape details shall be carried out prior to the first occupation of development. All planting, seeding or turfing comprised in the approved details of landscaping 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,] [or in accordance with any other program of landscaping works previously approved in writing by the Local Planning Authority] 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 a satisfactory landscape scheme is provided in the interest of well planned development and 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.

19. 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.

20. Prior to any works to the accessway known as The Pound, full details of any new surfacing or other changes shall be submitted and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Reason - To protect the character and appearance of the area and ensure the proposed are appropriate for the public right of way in accordance 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.

Planning Note:

The granting of planning permission does not authorise a right of way over The Pound or grant rights to undertake works without the relevant authorisations. These matters lie outside of the planning system and the applicant is advised to seek separate legal advice on the rights of access and landowners permission to undertaken any such works.

PLANNING NOTES:

1. Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved.
2. Birds and their nests are fully protected under the Wildlife and Countryside Act 1981 (as amended), which makes it an offence to intentionally take, damage or destroy the eggs, young or nest of a bird whilst it is being built or in use. Disturbance to nesting birds can be avoided by carrying out vegetation removal or building work outside the breeding season, which is March to August inclusive.
3. Temporary obstructions. No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken on or adjacent to the Public Right of Way that obstructs the public right of way whilst development takes place.
4. Route alterations. The development should be designed and implemented to fit in with the existing public rights of way network. No changes to the public right of way's legally recorded direction or width must be made without first securing appropriate temporary or permanent diversion through separate legal process. Alterations to surface, signing or structures shall not be made without prior written permission by Oxfordshire County Council. Note that there are legal mechanisms to change PRow when it is essential to enable a development to take place. But these mechanisms have their own process and timescales and should be initiated as early as possible – usually through the local planning authority.
5. Gates / right of way: Any gates provided in association with the development shall be set back from the public right of way or shall not open outwards from the site across the public right of way. No new gates should be placed across the Public Right of Way

6. Vehicle access (construction): No construction / demolition vehicle access may be taken along or across a public right of way without prior permission and appropriate safety/mitigation measures approved by the Countryside Access Team at the County Council. Any damage to the surface of the public right of way caused by such use will be the responsibility of the applicants or their contractors to put right / make good to a standard required by the Countryside Access Team.

7. Vehicle access (Occupation): No vehicle access may be taken along or across a public right of way to residential or commercial sites without prior permission and appropriate safety and surfacing measures approved by the Countryside Access Team. Any damage to the surface of the public right of way caused by such use will be the responsibility of the applicants, their contractors, or the occupier to put right / make good to a standard required by the Countryside Access Team.