

Case Officer: Will Anstey

Applicant: Salvation Army Trading Company Limited

Proposal: Variation of Condition 3 (temporary consent expiry date) of 18/01214/F (Change of Use to B8 storage and distribution with ancillary Class A1 shops and B1 offices).

Ward: Banbury Grimsbury and Hightown

Councillors: Cllr Beere, Cllr Biegel and Cllr Moon

Reason for Referral: Application affects Council's own land

Expiry Date: 19 December 2022

Committee Date: 12 January 2023

SUMMARY OF RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is a former car showroom (previously known as the Antelope Garage) situated to the southeast of Banbury town centre. The site encompasses a corner plot, situated in a prominent location at the junction of Swan Close Road and Upper Windsor Street. The unit sits within a wider industrial area and is accessed alongside the existing Shell petrol filling station.
- 1.2. The site comprises the southern section of a part single-storey, part two-storey, industrial style building which is constructed of brick and grey profiled metal cladding above. The building has relatively large openings at the front, consistent with its former use as a car showroom, with smaller openings at the back. The building is currently occupied by the Salvation Army as a donation centre.

Constraints

- 1.3. The application building is not a listed building but is situated within the designated Oxford Canal Conservation Area and adjacent to the locally listed building occupied by 'Laser Sailcraft'. The site is located within the Banbury Canalside area, which is part of Policy Banbury 1 of the Cherwell Local Plan 2015.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1 The application seeks to amend condition 3 of planning permission 18/01214/F. That permission granted consent for '*Change of Use to B8 storage and distribution with ancillary Class A1 shops and B1 offices*'. Condition 3 of the permission imposed a time limit on the consent, which requires the approved use to cease and the building to be returned to its previous condition on or before 21 September 2023.
- 2.2 The applicant seeks to amend the wording of Condition 3 to allow the current use, as consented by 18/01214/F, to continue for a further five years until 21 September 2028. Consent 18/01214/F has been implemented.

3. RELEVANT PLANNING HISTORY

3.1 The following planning history is considered relevant to the current proposal:

Application: 18/01214/F

This permission granted change of use of the site to B8 storage and distribution with ancillary Class A1 shops and B1 offices. The permission is subject to a time limit requiring the use to cease and the land be restored to its former condition on or before 21 September 2023. No external changes were proposed as part of the application.
Permitted 21 September 2018

Application: 18/01619/ADV

This permission granted consent for 3No. non-illuminated fascia signs, reverse applied windows vinyl's and 2No. internally illuminated totem units, all for the Salvation Army.
Permitted 6 December 2018

Application: 18/00407/DISC

Discharge of condition 4 (cycle and car parking details) of 18/01214/F.
Permitted 6 December 2018

4. PRE-APPLICATION DISCUSSIONS

4.1 No formal pre-application discussions have taken place with regard to this proposal however, the applicant was advised that to extend the time limit on the temporary permission a variation of condition application would be required.

5. RESPONSE TO PUBLICITY

5.1 This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records (amend as appropriate). The final date for comments was **17 November 2022**.

5.2 No comments have been raised by third parties.

6. RESPONSE TO CONSULTATION

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

TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

6.2 BANBURY TOWN COUNCIL: **No objections** to the temporary permission being extended to match the period of the lease.

CONSULTEES

6.3 OCC HIGHWAYS: **No objections** - *The proposals are unlikely to adversely impact the local highway network in traffic and safety terms. OCC does not object to the granting of planning permission.*

6.4 CDC ENVIRONMENTAL PROTECTION:

Noise: *No comments.*

Contaminated Land: *No comments.*

Air Quality: *No comments.*

Odour: *No comments.*

Light: *No comments.*

- 6.5 No comments have been received from CDC Economic Development, CDC Ecology or CDC Building Control.

7. RELEVANT PLANNING POLICY AND GUIDANCE

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

- 7.2 The Cherwell Local Plan 2011-2031 - Part 1 (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 Local Plan 2011-2031 – Part 1 replaced several of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 (CLP 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)

- Policy PSD1: Presumption in Favour of Sustainable Development
- Policy SLE1: Employment Development
- Policy ESD1: Mitigating and Adapting to Climate Change
- Policy ESD2: Energy Hierarchy and Allowable Solutions
- Policy ESD3: Sustainable Construction
- Policy ESD5: Renewable Energy
- Policy ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- Policy ESD15: The Character of the Built and Historic Environment
- Policy ESD16: The Oxford Canal
- Policy Banbury1: Banbury Canalside

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- Saved Policy C23 – Retention of features contributing to character or appearance of a conservation area
- Saved Policy C28 – Layout, design and external appearance of new development
- Saved Policy C29 – Appearance of development adjacent to the Oxford Canal
- Saved Policy C30 – Design control

- 7.3 Other Material Planning Considerations:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990

8. APPRAISAL

Background and Context

- 8.1 This application is made under Section 73(A) of the Town and Country Planning Act 1990 (as amended) (hereafter referred to as the TCPA) to vary condition 3 of planning permission 18/01214/F.
- 8.2 Section 73A (2)(c) of the TCPA allows Local Planning Authorities to grant planning permission for development that has already taken place without complying with some conditions.
- 8.3 Permission 18/01214/F has been implemented and the Salvation Army are operating from the application site. Condition 3 of planning permission 18/01214/F states: '*On or before 21st September 2023, the use hereby approved shall cease and the land and buildings restored to their former condition*'. As consent was granted in September 2018, this condition allows the consent to last for 5 years, however the Salvation Army's lease of the premises lasts for ten years, until 2028. The application seeks to extend the consent until September 2028.
- 8.4 The reason given for the condition is that '*To grant a permanent consent would be premature and could prejudice a comprehensive redevelopment of the wider Canalside area, and to comply with Policies PSD1 and Banbury 1 of the Cherwell Local Plan (2011-2031) Part 1 and Government guidance contained in the National Planning Policy Framework*.
- 8.5 Officers consider that Condition 3 relates to the principle of the development and therefore this forms the key issue for this application.

Principle of Development

Policy Context

- 8.6 The development plan for the district comprises the Cherwell Local Plan Part 1 adopted 2015 (CLP 2015) and the saved policies of the Cherwell Local Plan 1996 (CLP 1996). The National Planning Policy Framework (NPPF) is a material consideration.
- 8.7 Paragraph 11 of the NPPF states that a presumption of sustainable development should be seen as a golden thread running through decision taking, which means approving development proposals that accord with an up-to-date development plan without delay. The NPPF goes on to say that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
- 8.8 Policy PSD 1 of the Cherwell Local Plan 2015 echoes these aspirations and states that wherever possible, development should improve the economic, social and environmental conditions in the area.
- 8.9 Policy SLE 1 of the Cherwell Local Plan 2015 states that:

Employment proposals at Banbury, Bicester and Kidlington will be supported if they meet the following criteria:

- *Are within the built up limits of the settlement unless on an allocated site*
- *They will be outside of the Green Belt, unless very special circumstances can be demonstrated*
- *Make efficient use of previously-developed land wherever possible*

- *Make efficient use of existing and underused sites and premises increasing the intensity of use on sites*
- *Have good access, or can be made to have good access, by public transport and other sustainable modes*
- *Meet high design standards, using sustainable construction, are of an appropriate scale and respect the character of its surroundings*

Do not have an adverse effect on surrounding land uses, residents and the historic and natural environment

8.10 Policy Banbury 1: Banbury Canalside of the Cherwell Local Plan 2015 encompasses 26 hectares of land, including that which is occupied by the application site. *“Banbury Canalside is the name given to the land between Banbury Town Centre and Banbury Railway Station. The successful regeneration of Canalside and its potential to act as a catalyst for change in the town has been a key component of Cherwell District Council’s planning and regeneration aims for a number of years”*. When considering proposals for development in this location, it is important to understand the principles enshrined within the policy, which seeks the following:

Provision of new homes, retail, office and leisure uses, public open space, pedestrian and cycle routes including new footbridges over the railway line, river and canal, and multi-storey car parks to serve Banbury railway station. Re-development would bring about significant environmental benefits in terms of improving the appearance of the built environment, the town centre, and the quality of the river and canal corridor. The wider community will have access to new services and facilities and Banbury’s economy will benefit with the increase in the number of visitors to the town.

8.11 It is noted that, given the complexities of the site, a separate Supplementary Planning Document (SPD) is to be developed and will form the basis of an Action Plan to take forward this regeneration scheme. However, whilst the ‘Canalside SPD’ is in preparation, it has not progressed since 2013.

Assessment

8.12 Within the Committee Report for application 18/01214/F Officers explained that the proposed use of the building for storage and distribution, with ancillary retail and office elements, was not entirely in accordance with the aspirations of policy Banbury 1. It was however noted that there had been no progress on the Canalside SPD and no imminent likelihood of a scheme coming forward for the comprehensive redevelopment of the Canalside area. Given such context and that the scheme complied with the requirements of policy SLE1 of the CLP 2015, it was concluded that the change of use was acceptable in principle.

8.13 It was though considered that a temporary permission was appropriate to ensure that the Canalside redevelopment could be undertaken in the future.

8.14 It remains the case today that the Canalside SPD has not progressed and there is no imminent likelihood of a scheme coming forward for the comprehensive redevelopment of the Canalside area. As such, the context in which the original decision was taken remains unchanged.

8.15 Further, the proposal remains compliant with policy SLE1 of the CLP2015 as it is within the built-up limits of Banbury; is outside of the Green Belt; makes efficient use of the site; has good access and can be easily accessed by public transport; does not affect the design or character of the area; and does not have an adverse effect on surrounding uses.

- 8.16 Condition 3 originally allowed the consent to last for 5 years and this current application seeks to extend that period by a further 5 years. Given the context of this application is not substantially different to that which existed in 2018 when consent was first granted, and given that it has operated for five years already without causing any detriment, Officers consider it reasonable to allow the consent to run for a further 5 years, as sought by the applicant.
- 8.17 Within the original Committee Report it was also noted that: *'the Council has ownership of the land and is responsible for leasing the property to the applicant. Should the 'Canalside SPD' progress in the future, then the Council would have control over whether this site could be vacated to make way for any future development. Whilst this is not necessarily a planning matter, given the control that the Council has over the land, it is considered that the granting of this permission would not inhibit the future implementation of this Policy Banbury 1 and is therefore acceptable in this regard'*. As the Council remains the owner of the land, this statement remains applicable today.

Other Matters

- 8.18 Extending the time period for this temporary consent is not considered to have any impact on the character of the area, heritage assets, residential amenity, highway safety, ecology or climate change. Further, no consultees have objected to the scheme and there have been no public comments.

Conditions

- 8.19 When granting an application under Section 73, it is necessary to reimpose the conditions that were on the original consent unless changes have been found to be acceptable under this application or the conditions are no longer required.
- 8.20 Condition 1 of 18/01214/F imposed a time limit for commencement of development. As the development has been commenced, this condition is no longer necessary. The second condition required compliance with the submitted plans and remains relevant. The third condition is the subject of this application and is recommended to be altered to allow the consent to continue until 2028. The final condition (no.4) required submission of car and bike parking details. Details were submitted and approved under application 18/00407/DISC. Therefore, this condition is recommended to be modified to require ongoing compliance with the approved details.

9. PLANNING BALANCE AND CONCLUSION

- 9.1 In view of the nature of the development and the policy and site context, extending the time period of this temporary consent is considered to be acceptable against Policies SLE1 and Banbury 1 of the Cherwell Local Plan 2015 and Government guidance contained within the NPPF. Furthermore, there would not be a detrimental impact on visual amenity, residential amenity or highway safety. The proposal is therefore considered to be sustainable development that accords with the relevant policies of the Development Plan, and in accordance with Paragraph 11 of the NPPF, permission should be granted.

10 RECOMMENDATION

DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW (AND ANY AMENDMENTS TO THOSE CONDITIONS AS MAY BE DEEMED NECESSARY)

CONDITIONS

Compliance with Plans

1. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents:
 - Application form for application 18/01214/F
 - Site Location Plan for application 18/01214/F
 - Site Plan for application 18/01214/F

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

Temporary Consent

2. On or before 21st September 2028, the use hereby approved shall cease and the land and buildings restored to their former condition.

Reason: To grant a permanent consent would be premature and could prejudice a comprehensive redevelopment of the wider Canalside area, and to comply with Policies PSD1 and Banbury 1 of the Cherwell Local Plan (2011-2031) Part 1 and Government guidance contained in the National Planning Policy Framework.

Parking

3. The parking facilities approved under application 18/00407/DISC shall be retained for the parking of vehicles at all times.

Reason: In the interests of sustainability, to ensure a satisfactory form of development and to comply with Government guidance contained within the National Planning Policy Framework.