

**SUPPLEMENTARY INFORMATION**

**Planning Committee**

**7 August 2014**

Agenda Item Number	Page	Title
See written update	(Pages 1 - 22)	Written Update

*If you need any further information about the meeting please contact Aaron Hetherington, Democratic and Elections [aaron.hetherington@cherwellandsouthnorthants.gov.uk](mailto:aaron.hetherington@cherwellandsouthnorthants.gov.uk), 01295 227956*

# Agenda Item 20

## CHERWELL DISTRICT COUNCIL PLANNING COMMITTEE

7 August 2014

### WRITTEN UPDATES

#### Agenda Item 7    13/00847/OUT    Phase 2 SW Bicester

- In response to the letter received on behalf of the promoters of NW Bicester (see page 37 of the agenda), a response has been received from OCC as follows

*Before replying to your specific questions I just wanted to clarify a few points raised in Iain Painting's letter:*

- *Paragraph 5 of his letter states that, "Both applications make use of an earlier version of the model (2007 data) prior to the revalidation by Halcrow using 2012/13 data." The model has not been revalidated. The model version that has been used to assess the North West Bicester masterplan is a re-based 2007 model, i.e. using the same **base matrices**. The work Halcrow undertook in 2012/13 was to verify that traffic count data in 2012 was similar to the 2007 modelled flows as traffic growth had not been at the level expected. The **base network** had already been altered to include the south-west link road when that opened and in 2013 the base network was further updated to include the changes in the town centre.*
- ***Future year matrices** have been developed based on the latest information from Cherwell District Council as each development has needed to undertake a transport assessment. Clearly, this has been an emerging picture over the last couple of years and the modelling undertaken for NW Bicester needed to test all proposed growth to the end of its build out period (as understood at that time) due to the fact it was testing the masterplan, i.e. a much longer timeframe than most other development sites.*
- ***Area for assessment** – the scale of development proposed at North West Bicester and the potential interplay between the peripheral route corridors meant a need to assess the impact across the town.*

*Your specific questions:*

- *Hopefully the details above help to explain that the base model has not significantly changed and the future year scenarios have reflected the latest information as each application has come forward. There have been changes in proposals for future developments and highway schemes, however, the transport assessments for Graven Hill and SW Bicester highlight the junctions that their developments will have an impact on and these changes would not be expected to alter this. Furthermore, mitigation measures or contributions towards improvement measures have been agreed. The original transport assessments do*

therefore remain valid, reasonable and assess the likely impact.

I trust that this helps to clarify the situation, but please let me know if you need any further detail on this.

- It is also requested that **delegated authority** be given to the HDM, in conjunction with the Chairman, in respect of any minor amendments to the wording of the conditions or the section 106 agreement that may be necessary following further detailed discussions with the applicants

**Agenda Item 8      13/01601/OUT      Castle Quay 2, Spiceball Park Rd, Banbury**

- Letter of **objection** received from OCC –see letter dated 6.8.14 at end of update (Appendix 1)
- In light of these comments **recommendation (a)( page 90) is proposed to be amended** to read that delegated authority be given to the Head of Development Management (in conjunction with the Chairman of this Committee) to approve the application **subject to** (i) the applicant reaching agreement with the County Council over the highway impacts of the proposals and the consequent need for appropriate contributions to mitigate those impacts, and (ii) reaching agreement with this Council with regards to the impact of the proposal upon the adequacy of town centre car parking. In the event that agreement is not reached, after reasonable efforts **to do so, to the satisfaction of the HDM ( and Chairman of Committee)**, this application shall be returned to a future meeting of this Committee for further consideration and determination
- Letter received from applicants agent re Section 106 contributions and applicants position statement –see letter dated 5.8.14 at end of update (Appendix 2)
- Further comments received from applicants agent re phasing condition and adjustments to conditions to reflect phasing

We do still need a phasing condition, and many conditions need a tweak to dovetail with the notion of phasing e.g. 1, 11, 12, 13, 15, 16 , 18, 19, 20, 21, 22.

For phasing condition, this needs careful thought, but can I suggest a working version as follows:

*“Prior to commencement of development hereby approved and with each reserved matters submission thereafter, details of the proposed phasing of works shall be submitted to the local planning authority for approval. Development shall be undertaken in accordance with the approved details”*

The reason for the condition is in the interest of the proper planning of the area.

What we are primarily trying to do is allow the phased submission of RM details, such that we can accelerate the leisure elements (given I understand Heads of Terms are agreed). The condition should allow us to

define discrete project phases, but should also help you understand project sequencing (which may or may not appear in the Construction Environmental management Plan).

I suggest you reserve the right to agree any tweaks to these (including the information that you might need to specify).

**NOTE:** the EA related conditions do not appear to reflect the revised conditions requested by the EA (see attached). These need updating.

- It is further **recommended** that the above wording be adopted as **condition 24** and that the above numbered conditions be amended to allow reserved matters submissions to be made for separate phases following the overall approval of phasing required to be approved by condition 24
- The Inland Waterways Association Branch Secretary has commented that the revised scheme does cover a number of the major concerns that they had, especially the canopy over the canal and the canyon effect caused by the proximity of tall buildings enclosing the canal and the General Foods Social Club... As a waterways based Association they concern themselves with effects on the canal and leave others to comment on the design beyond our remit.
- E-mail received from the Vice-Chair of the GF Social Club commenting that there is a factual error in the application in reference to GF Club and agreement reached on page 88.  
This is corrected to read

The Council is aware there have been discussions between the applicant and the GF Club regarding the land take and onsite car park provision, whilst these are ongoing and the discussions have reached an advanced stage no formal agreement is in place at this point.

**Agenda Item 9**

**14/00067/F**

**Orchard Way, The Paddock, Heyford Rd.  
Somerton**

- Letter sent by e-mail to Members yesterday

We are concerned that this application and the officer report do not fully and accurately set out the real situation upon which you will need to make a decision. We would urge all members to read all the objections submitted to this application and previous applications.

This matter has a long involved and contentious history spanning several years involving a significant number applications and several flagrant breaches of planning conditions necessitating a number of retrospective planning permissions. The history of previous applications is incomplete and does not represent an accurate reflection of all applications resubmissions appeals refusals etc relating to this property. This is not helped by the applicant changing the name of the property and description of location. This can lead to some confusion when looking at previous applications. The property description 'west of the paddocks' in recent applications is confusing when previous applications were under the name of Somerfields to which the property is attached (a necessary planning condition).

The main and fundamental objection must be the fact that this apparent modest application which outwardly changes nothing much is in fact a significant change in the whole basis of this development achieving what every other previous application failed to accomplish, namely a separate dwelling house on this land which can then be sold. There is no mention of a previous planning condition specifically preventing separation of the land and specifically preventing the use of this building as a dwelling. This aspect has not been properly addressed within Ms Horley's report.

Our objections are as follows:

1. Permission was granted for a garage but this was built wider and higher than the original permission, necessitating a retrospective planning application - completely out of keeping with the area and a garage that could never have a car in it as the lintel on the floor made vehicular access impossible. It had an RSJ installed because it was always intended as a 2 storey dwelling. Later doors were then installed and windows contrary to planning conditions. None of the conditions were complied with and none were enforced. For those that have not seen the garage-office - you need to have a look as it is wholly out of keeping with an area that abuts a conservation area.
2. We and other neighbours objected to these changes in 2006 - and we were given categorical assurances that the conditions would prevent further developments - that is precisely what this current application is set to destroy.
3. Planning control are essential to prevent creeping development, bit by bit, to produce a dwelling when for the last 8 years we have been assured that none would be allowed.
4. By way of clarification, shouldn't this actually be a retrospective application for the office to be used as a dwelling? Given it has 2 toilets, kitchen, laundry, separate sewage, water and electricity supply, bin collection and post code (Orchard Way OX25 6LL) - I assume the fact it also has a double bed in is not related to office use? Its already a dwelling.
5. Road access – the proposed plans look like a dual carriageway and wholly out of keeping with the village spoiling its visual amenity. This is the main road through the village and is simply not appropriate. It would also mean that an old stone wall would need to be knocked down.
6. Existing planning condition - land not to be separated from the main dwelling this was the corner stone which was used as the justification for granting retrospective planning permission but this is now, if the officer recommendation is to be followed, what will be the eventual outcome of this application.
7. Creeping development – this is the end result of a long process to achieve what planning officers originally rightly and consistently refused – namely a dwelling site on this land...
8. It is essential that Planners make an appropriate stand against these types of plans - otherwise the way forward is clear - build a garage , make it bigger and higher - convert to a dwelling and call it an office and

then apply to become a dwelling and presumably apply for an extension later once the principle of a dwelling has been achieved - takes longer but you will eventually get what you want...

It is for that reason that we are so disappointed that the Officer in her report summarises all the issues of concern from the community but does not then actually address these points of concern in detail within her report. Surely you would want to ensure that you have all the relevant and available information before you in order to make a proper decision. Simply setting out the objections without properly and fully analysing and commenting upon them, is with respect, a material procedural deficiency. Our view is that you should ask for more details with regard to the whole history of this matter and arrange for a site visit to ensure that members are properly informed as to the appropriateness of granting planning permission in these circumstances.

Apologies for appearing to be yet again the persons moaning about this planning application and we do worry that perpetual applications might mean neighbours do not respond to each and every application but the whole history of this plot of land has been consistently opposed by a large number of people, the Parish Council and the conservation officer.

We still have faith in a system that needs to be open transparent and fair in handling difficult local contentious issues. At all stages the Planning dept have stated that this should not be a dwelling and have consistently attached planning conditions to prevent this. We simply do not understand the reasons why this correct position suddenly has changed.

**Agenda Item 12      14/00810/F      1 Hardwick Road, Hethe**

- Two e-mails from a neighbour supporting the application have been received after the report was written. The following issues were raised:
  - The mature planting at the front of neighbouring properties means that there is no obvious line to be broken;
  - The extension would not be detrimental to the appearance of the street;
  - The family contribute to the community;
  - The house is set well back from the road;

The family could move if they do not gain planning consent

**Agenda Item 14      14/00890/F      Units A5 and A6, Pioneer Square Bicester**

- **Oxfordshire County Council Highways Liaison Officer:** No objections – refer to previous comments.

On the previous applications, conditions were recommended relating to the access and parking areas. As this application is retrospective, the access and parking has been constructed in accordance with the previous conditions and therefore there is no requirement to include the conditions on this application.

- Bicester Town Council strongly object. They say that a gymnasium is not suitable for the area, and that the premises should be used for retail purposes only. The Town Council is very clear in their desire to see more retail units in the town centre/Pioneer Square

**Date:** 06 August 2014  
**Your ref:** 13/01601/OUT-2

**Environment & Economy  
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Speedwell Street  
Oxford OX1 1NE**

Bob Duxbury  
Development Control  
Cherwell District Council  
Bodicote House  
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Banbury  
OX15 4AA

**Sue Scane  
Director for Environment &  
Economy**

Dear Bob,

### **Objection to Spiceball Application Ref 13/01601/OUT-2**

I am writing to clarify the County's position on the above application and request that you share this letter in full with Cherwell's Planning Committee on Thursday 7<sup>th</sup> August 2014.

Whilst we continue to support the principle of redeveloping this site, and while we recognise its importance to the regeneration of Banbury and are committed to finding a planning solution for the proposal, we are forced to object to this application on the basis that we have had insufficient time to review a substantial amount of additional transport information that was submitted at a very late stage.

As you are aware, the County Council has been working with the applicant since the summer of 2013 and has laid out, very clearly, the requirements in respect of the scope of the transport assessment needed to determine the impact of the proposal and to agree appropriate mitigation required to support the proposal. Annex 1 contains a list of the initial highway/transport concerns that were discussed at the meeting with yourself and the applicant on Tuesday 1st July 2014. At this meeting it was agreed that the applicant would provide a comprehensive response to this list '*over the next few days*', urgent clarification on base flows and additional documentation, audits and surveys by Friday 11th July 2014. OCC did not receive anything until Tuesday 22<sup>nd</sup> July 2014, only to be told to disregard a key component of this information which was revised and resent on Friday 25<sup>th</sup> July 2014. The final piece of information, the Framework Travel Plan was not received until Wednesday 30<sup>th</sup> July 2014.

It is wholly unreasonable for OCC to be expected to review and fully assess the information received within a period of eight working days. I am sure you share my frustration that information has been submitted at such a late stage despite the continuous engagement with the applicant. By taking this application to committee without our full considered transport response, the District Council is undermining the County Council's role as Highway Authority and potentially setting an unwelcome precedent for future applications.

Approval of this application in advance of OCC's full transport response could have serious implications for Banbury and its transport network. There is a risk of inadequate mitigation measures being secured, which could have implications for congestion, parking and highway safety. In addition, the scale and cost of the necessary highway mitigation measures cannot be quantified with sufficient confidence at this time for inclusion in either a S278 and/or S106 agreement. If the development is approved now, it may prove impossible to fully mitigate at a later stage. Furthermore, if Grampian conditions concerning the site access are imposed and



for technical reasons details cannot later be agreed, you risk issuing a consent that cannot be implemented.

Given the location of this development, at the centre of the road network for Banbury, it is difficult to emphasise enough the importance of ensuring that proper mitigation is assessed and secured. Insufficient planning for parking or increased congestion at town centre junctions could cause chaos or gridlock as people circle looking for available parking or queue at network pinch points. Should the application be approved, at the least the planning conditions previously supplied and the updated Local Highway Authority conditions and obligations in Annex 2 of this letter should be applied.

However, to reiterate, the risks of approval at this stage are:

1. The development could have a serious inadequately mitigated impact on Banbury's local highway network capacity. If the development is approved now without our full assessment of the traffic impact, it may prove impossible to fully mitigate at a later stage.
2. The development could have detrimental effects on highway safety.
3. Without having fully assessed the adequacy of the latest version of the transport assessment, there is currently no basis on which to agree the appropriate financial contribution towards highway measures. The scale and cost of the necessary highway mitigation measures cannot be quantified with sufficient confidence at this time for inclusion in either a S278 and/or S106 agreement.
4. If Grampian conditions concerning the site access are imposed and for technical reasons details cannot later be agreed, you risk issuing a consent that cannot be implemented.
5. There is potential to set a precedent whereby a planning application is determined without the consideration of the Highway Authority's full consultation response.

We object on the basis that we have had insufficient time to review the substantial amount of additional transport information that was submitted at a very late stage. Despite this we remain committed to working with the applicant and CDC to finding a planning solution for the proposal. Notwithstanding our comments above, an alternative would be to seek deferral of the item for eight weeks to allow OCC to properly assess the late submission material and to work with the applicant and District to set out a supportive transport position.

Yours sincerely

Bev Hindle  
Deputy Director – Strategy and Infrastructure Planning

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Enc. Annex 1 – Interim list of key highway/ transport concerns 26.06.14  
Annex 2 - Updated Local Highway Authority conditions and obligations  
Annex 3 – S106 Justification February 2014

## **Annex 1 – Initial Transport Concerns Raised 26.06.14**

### **1. Access matters**

- Given the lack of technical detail submitted for the proposed structures and highway works (bridge, cinema service access, embankment works) a Grampian condition will still be required to ensure that access proposals are adequate and safe prior to any construction.
- Please refer to previous LHA comments of 29th January 2014 on proposed new Cherwell Drive service yard access. Matters such as vision splays, traffic speed survey, removal of trees, road safety audit and gradient are still outstanding.

### **2. Layout and detail matters**

- No information has been provided on swept path for supermarket lorries egressing the foodstore service yard onto Spiceball Park Road. Can this manoeuvre be undertaken safely?
- Cinema service yard – note that a 16.5m artic lorry will not be able to exit onto Cherwell Drive if the north loading bay is occupied by a similarly sized delivery vehicle.
- The proposed pedestrian priority area on Spiceball Park Road (see Parameters Plan) is located in a right turn lane - not advisable. The pedestrian route from CQ to Spiceball appears worse under new proposals – e.g. all pedestrians will need to be diverted off the desire line, ascend steps or ramp, cross traffic at the top of the supermarket car park access ramp before walking through the car park.
- There appears to be no convenient disabled access to the new Riverside path. The new riverside path is to be shared with cyclists, however only appears 1-2 metres wide – likely conflict between pedestrians, cyclists.

### **3. Infrastructure Provision matters**

- S106 Heads of Terms – no mention of pedestrian/ cycle audit improvements or public transport contributions. Reference to the Hennef Way/ Ermont Way improvement scheme has not been discussed with OCC. Outstanding concerns with the Transport Assessment (below) prevent a comprehensive/ appropriate mitigation package being identified at this stage.
- Bus stops on Cherwell Drive – only one bus stop is shown instead of the two bus stops with connecting pedestrian crossing infrastructure previously agreed.
- Documentation doesn't tally – e.g. CEMP refers to new pedestrian routes and crossings being provided, but no mention of these in the Transport Assessment.

### **4. Transport Assessment (TA) matters**

- This is a weak TA for such a strategic site and does not comply with Department for Transport good practice guidance. There is no reference or acknowledgement of Local Policy.
- The TA is focussed on accommodating car trips generated from the development, with an imbalance in demonstrating how walk, cycle and public transport trips will be accommodated and promoted, and a subsequent lack of a coherent transport strategy for the development.
- There is no substantive discussion of public transport access, and the rail station and its role in serving the development is not acknowledged.
- Parking Strategy: The TA should include a proposed parking strategy (number of spaces, parking accumulation, parking layout in relation to other site elements, ratio of operational to non-operational spaces, method of car park operation, overspill parking considerations, establishment of/proximity to controlled parking zones, disabled parking, motorcycle parking, cycle parking).
- Comments from OCC's Traffic Signals Team are awaited. There are concerns with assumptions made in TA, and it is unclear whether the correct traffic signals data provided

to the transport consultant in January 2014 has been used. Traffic signals junctions have been modelled excluding pedestrian phases, which is unrealistic and not appropriate.

- The Travel Plan has not been produced in accordance with DfT or OCC guidance. This needs to be addressed.
- The recommendations of OCC's independently commissioned assessment of the Gravity Modelling have not been carried forward or included in the revised TA. Further comments are awaited from OCC's Transport Strategy Team.
- Base flows: There is still no evidence beyond the hand drawn diagrams previously provided to enable validation of the turning count surveys undertaken by MJM.
- TA 7.54: TEMPRO figures indicate a reduction in traffic levels in future years, which seems contrary to DfT forecast trends for traffic levels to increase. The calculations behind these figures need to be submitted for consideration. An assumption of declining traffic growth will underestimate future highway network/ junction impact issues.
- TA Table 7.2 – 2023 base flows are lower now compared with original TA. Why?
- Some highway junctions with worse performance due to the new development are not highlighted in the TA as having any issues. Capacity or performance issues at junctions must be appropriately mitigated.
- It is unclear whether 'worst case' scenario in the junction modelling refers to the maximum parameters scheme for proposed development, or 85<sup>th</sup> percentile trip rates (or both).
- The TA needs to show consistency across all the sections on highway junction impact– e.g. some junctions specify 'Degree of Saturation', others 'reserve capacity'. Some junctions refer to '*With development*', others to '*With worst case development*' or '*Likely development*'.

## 5. Parking matters

- The parking demand of the proposed development as indicated by the developer (570 spaces at busiest time) is to be met by some new provision and use of existing car parks in Banbury. The new provision (min. 385 or max. 620 spaces according to the Planning Statement, 555 spaces according to plans) must be considered against the local parking spaces to be lost (568 spaces according to the Parking Demand of Proposed Development).
- OCC Parking Standards (considering edge of town centre location) would generally require 364 spaces for the supermarket (max. parameters), 1 space per 5 seats for the cinema and 1 space per 5m<sup>2</sup> public space for the restaurants.
- It is unlikely that supermarket shoppers will park at a distance to do food shopping if there is insufficient parking available at a reasonable distance accessible by trolley.
- A proper assessment must be made of future parking demand in Banbury as a result of general population growth and committed development.
- Statement of Community Involvement: 'More parking', 'free parking', 'convenient parking', 'disabled parking' are common themes requested by the public.
- Construction Phase Car Parking Assessment – this document is very confusing. The alphabetised list of Banbury car parks does not match the numbered capacity surveys – there is no way to interpret available car park capacity in Banbury. Car park names are changed throughout the document- further lack of clarity. The conclusion that the overall quantum of available parking will have no impact on junctions, queuing etc is not proven. There is likely to be an impact if visitors are turned away from the site and need to hunt elsewhere for parking spaces in Banbury. No consideration of electronic car park availability/ directional signage. Some inaccuracies in car park beat surveys. The inclusion of Banbury rail station car parks (Tramway) is not appropriate as these parking spaces are now closed to public.
- Loss of parking during construction doesn't tally with CEMP document.

## 6. Minor (potentially addressed by clarification/ planning condition)

- Comments from Highways Agency on M40 impact?
- Construction traffic – planned during network peak hours. Not acceptable.

- Plans now show a Waitrose store – potential implications on trip rates and likely catchment area if this is the case.
- The new roundabout close to the Mill Arts Centre car park access and proposed pedestrian infrastructure will require a road safety audit. Amendments will be required to ensure that cars parked at the Mill can manoeuvre and egress safely.
- At the Mill Arts Centre a small number of third-party parking spaces are proposed to be lost as a result of the new roundabout arrangement on Spiceball Park Road. These spaces will need to be offered/ replaced elsewhere.
- Banbury highway signage will need reconfigured as a whole.
- Comments from Drainage Team awaited.
- The Construction Environment Travel Plan refers to a comprehensive review of access and surveys to be undertaken to ensure that site material can be delivered and dropped off without damaging the existing infrastructure. This particularly applies to oversize loads.
- Need to facilitate pedestrian access with walking routes through CQ shopping centre outside of regular hours in order to maximise permeability with town centre and Bridge Street

For completeness, it should be assumed that the proposed conditions and obligations requested by OCC in January 2014 are still pertinent.

## **Annex 2 – Updated Local Highway Authority Recommended Planning Conditions and Obligations 05/08/2014**

### **Legal Agreement required to secure:**

- S38 Agreement – adoption of private land for use as public highway
- S278 Agreement – works on the public highway including new highway accesses, realignment of Spiceball Park Road carriageway, replacement of the roundabout at the south end of Spiceball Park Road, new pedestrian infrastructure and crossing improvements, traffic calming features, road markings, street-lighting, drainage, highway signage, bus stops on Cherwell Drive, new bus shelters and bus stop markings, installation of CCTV and SCOOT traffic signal system for Castle Street/ Southam Road corridor and potential improvements to other traffic signal junctions in the vicinity
- S106 Agreement –transport / highway financial contribution of £6,923,017 (index-linked) previously requested. See separate justification of 5<sup>th</sup> February 2014, which will need to be updated pending final approval of the revised TA.

### **Highway Conditions:**

If the planning authority is minded to approve the application, the following conditions are required in addition to the aforementioned legal agreements / planning obligations:

#### **Access – Cherwell Drive**

- Grampian Condition – No reserved matters or full application to be submitted until full details of the proposed servicing access from Cherwell Drive, to include a road safety audit, structural report and detailed plans, are submitted to and approved in writing by the Local Planning Authority. Reason: DR1.

#### **Roundabout and servicing/ delivery provision**

- Grampian Condition – No reserved matters or full application to be submitted until full details of the proposed replacement roundabout on Spiceball Park Road and access, parking and turning arrangements for servicing and delivery vehicles are submitted to and approved in writing by the Local Planning Authority. Reason: DR1.

#### **Access: Full Details**

- Prior to the commencement of the development, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details. Reason: DR1.

#### **Turning Area and Car Parking**

- Prior to the commencement of the development, full specification details (including construction, layout, surfacing and drainage) of the turning areas and parking spaces within the curtilage of the site, arranged so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Thereafter, and prior to the first occupation of the development, the turning area and car parking spaces shall be constructed in accordance with the approved details and shall be retained for the parking and manoeuvring of vehicles at all times thereafter. Reason: DR3.

#### **Highway infrastructure works details**

- Prior to the commencement of the development, full details of the works to be carried out on the public highway, including realignment of the carriageway of Spiceball Park Road, replacement of the roundabout at the south end of this road, provision of new pedestrian infrastructure and crossing improvements, traffic calming features, road markings, street-lighting, drainage, highway signage, bus stops on Cherwell Drive, bus shelters, road markings and traffic signalised junction improvements must be submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development, the highway works must be constructed in accordance with the approved details. Reason: DR1.

### **Highway signage strategy**

- Prior to first use of the development, a highway signage strategy must be submitted to, and approved in writing by, the Local Planning Authority. The agreed signage strategy must be fully implemented prior to first use of the development. Reason: In the interest of highway safety and traffic management.

### **Cycle Parking Provision**

- Prior to the first use or occupation of the development, covered cycle parking facilities shall be provided on the site in accordance with details which shall be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter, the covered cycle parking facilities shall be permanently retained and maintained for the parking of cycles in connection with the development. Reason: DR4.

### **Travel Plans**

- Prior to the first occupation of the development hereby approved, Travel Plans, prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and OCC's Guidance "Transport for New Developments: Transport Assessments and Travel Plans", shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details. Reason: DR4.

### **Access to Adjoining Land**

- Provision shall be made within the layout for vehicular and/or pedestrian access to serve the land adjoining to Mill Arts Centre, Castle Quay shopping centre and riverside path. Reason: DR6

### **No Surface Water Drainage to Highway/ Neighbouring Properties**

- Prior to the commencement of the development hereby approved, full details of a SUDS drainage scheme to prevent any surface water from the development discharging onto the adjoining highway or neighbouring properties shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the drainage scheme shall be implemented and retained in accordance with the approved details. Reason: ER2.

### **Construction Traffic Management Plan**

- Prior to the commencement of development, a construction traffic management and phasing plan must be submitted to, and approved in writing by, the District Planning Authority. The construction works must be carried out in accordance with the details approved in the construction traffic management plan. Reason: To mitigate the impact of construction vehicles on the surrounding highway network, road infrastructure and local residents, particularly at morning and afternoon peak traffic times.

### **Pedestrian Access**

- During the opening hours of the Castle Quay 2 the main pedestrian routes through the adjacent Castle Quay Shopping Centre must remain open so as to facilitate pedestrian access to and from the town centre and Bridge Street. Reason: DR6.

### **Reasons:**

DR1 Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework

DR3 Reason - In the interests of highway safety, to ensure the provision of off-street car parking and to comply with Government guidance contained within the National Planning Policy Framework.

DR4 Reason - In the interests of sustainability and to ensure a satisfactory form of development, in accordance with Government guidance contained within the National Planning Policy Framework.

DR6 Reason - In order to secure the proper planning of the area and the comprehensive development of adjoining land and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

ER2 Reason - In the interests of highway safety and flood prevention and to comply with Government advice contained within the National Planning Policy Framework.

# Annex 3 - S106 Justification February 2014

Application Site: Spiceball/ Castle Quay (13/01601/OUT)

1 Contribution towards Bridge Street/ Cherwell St improvement scheme		% of existing junction traffic	% COSTS
<b>0800-0900 (AM PEAK)</b>			
Total traffic into Bridge St/Cherwell St junction (PCUs) - from MSCP TA survey (2012)	2817		
Net additional development-related trips from 13/01601/OUT TA - Updated TN3	33	1.2	£39,068
<b>1700-1800 (PM PEAK)</b>			
Total traffic into Bridge St/Cherwell St junction (PCUs) - from MSCP TA survey (2012)	2948		
Net additional development-related trips from 13/01601/OUT TA - Updated TN3	124	4.2	£140,278
Estimated cost of Bridge St/ Cherwell St highway improvement scheme	£3,335,000		
Scheme costed: December 2011, subject to consultation			
<b>Total Contribution*</b>			<b>£89,673.16</b>
* based on averaging worst-case AM and PM peak impact, index-linked Baxter January 2014			
<b>2 General contribution to Banbury Transport Strategy, based on CDC's draft SPD</b>			
£824 per job created	716 jobs		£589,984.00
Contribution to be spent on highway and transport schemes in the vicinity, including junction improvements, sustainable transport and accessibility improvements index-linked Baxter January 2014			
<b>3 Public Transport Contribution</b>			
£10,000 per car parking space under-provided**	624 spaces	6240000	£6,240,000.00
** Based on 2008 Department for Transport figures from 'The Essential Guide to Travel Planning': Construction of multistorey parking costs some £5000-£10,000 per space and underground parking can be even more expensive. Average annual maintenance cost of £400 per parking space per year.			
<b>4 Castle Street/ Southam Road corridor junction improvements</b>			
The applicant to meet the costs of installing SCOOT traffic signal software along this north-south corridor to improve junction capacity To be delivered by S278 Agreement			£278
<b>5 Travel Plan</b>			
Package of sustainable travel measures to be agreed (planning condition)			
Travel Plan Monitoring fees			
	A1 food retail	£960	
	A3 restaurants/ cafes	£960	
	C1 hotels	£480	
	D2 assembly & leisure	£960	
	<b>Total</b>	<b>£3,360.00</b>	

<b>GRAND TOTAL:</b>	<b>£6,923,017.16</b> (index-linked)
	<b>+ S278 Agreement</b>



5 August 2014

**Delivered by email and post**

Bob Duxbury  
Cherwell District Council  
Bodicote House  
Bodicote  
Banbury, OX15 4AA

Dear Bob

**Land Adjacent to The Oxford Canal, Spiceball Park Road, Banbury - Planning application 13/01601/OUT, Proposed Planning Obligations (Financial Contributions)**

I refer to our on-going dialogue with Cherwell District Council and Oxfordshire County Council in respect of the above planning application which is due to be reported to your Planning Committee this Thursday (7 August).

Notwithstanding the fact that a response from the County Council is pending (in respect of Transport and Highways matters), our client has given further, more detailed consideration, to the likely scope and scale of planning obligations required to mitigate the impact of the development proposed. In doing so, we are mindful of the County Council's position reported to committee on 6 February 2014 and, in particular the scope of financial contributions set out in their response. We are also mindful of the current committee report.

The County Council have previously requested a general contribution to the Banbury Transport Strategy (based on CDC's draft SPD) of £589,984 and a further Public Transport contribution of £6,240,000 (based on their assessment of the shortfall of parking within the scheme to meet anticipated demand).

Since February, significant work has been undertaken by the applicant to reassure both the District and County Council's that the level of parking to be provided within the scheme is commensurate with the needs of a mixed use development in, to all intents and purposes, a town centre location; a location well related to the commercial core of the town (and wider surplus parking provision) and in close proximity to rail and bus stations.

The latest submission in this regards ('Response to OCC Interim Concerns' 25 July 2014) confirms the applicants view that sufficient parking will be provided to meet the needs of the development, either on site or supported by existing car parking provision in the locality. On this basis a 'Public Transport' contribution is deemed neither necessary nor required and will not meet the appropriate tests (see attached 'Position Statement' ref: UK-200244131.1). No such financial contribution is therefore proposed, by the applicant, to be included within the Section 106 Agreement.

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In respect of the contribution to the Banbury Transport Strategy, the document referenced by OCC is the Cherwell 'Planning Obligations SPD' (draft 2011). As acknowledged by Cherwell Council, this document is informal guidance and does not carry the weight of a formally adopted SPD. Indeed, in our view the document should be attributed little weight, only of use to guide discussions in respect of the range and form of obligations that may be sought in association with major developments.

Against the backdrop of the above, our clients are minded not to agree to any financial contributions relating to either the Transport Strategy or Public Transport as reported in the County Council's last formal response on the matter of planning obligations.

The applicant is however committed to addressing the direct impacts of the development and these were set out in Planning Statement accompanying the revised submission. They are included again as part of a 'Position Statement' which accompanies this letter. The overall scope of works remains unaffected, though the applicant has chosen to move certain contributions from the Section 278 works into the Section 106 Obligations as this is considered more appropriate.

In broad terms, the applicant considers that the scope of works identified in the proposed Heads of Terms (Position Statement, Appendix A - 'Transport/Highway Financial Contributions'), can be delivered at a cost in the order of **£350,000 (Three Hundred and Fifty Thousand Pounds)**, though accepts that more discussion with the County Council may refine how this sum is apportioned across the scope of works. The phasing of any such payments remains to be agreed, though the applicant is of the view that any phasing mechanism should relate to the occupation of the individual uses on site i.e. when the demand is generated.

The applicant requests that its assessment of the form and scale of appropriate financial contributions, necessary to mitigate the impact of development proposed (in line with the relevant 'tests') is reported to your Members at Planning Committee on Thursday, such that an appropriate resolution can be made and we can look to avoid the unhelpful situation of the application having to be reported back to the same committee (on this specific issue) at a future date.

We note that the committee report proposes a resolution to grant subject to successfully addressing the concerns raised by OCC Highways and the completion of a legal agreement to secure financial contributions. We agree that this is an appropriate resolution.

I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely

David Smith  
**Director**

david.smith@turley.co.uk

cc: Lisa Michelson – Oxfordshire County Council

**SCOTTISH WIDOWS PLC**  
**POSITION STATEMENT – PLANNING OBLIGATIONS**  
**13/01601/OUT**

**Summary**

This position statement has been prepared to deal with the following issues:

- The need for all obligations sought to be necessary, directly related to the development and fair and reasonable related to the scale and kind of development;
- To make it clear that the applicant does not believe that a public transport contribution based on car parking is necessary and/or fair and reasonable in relation to the development; and
- The need for section 106 contributions to be paid at appropriate stages of the development in order to reflect the phasing condition which will be attached to the planning permission.

**Legal Test**

Regulation 122 of the Community Infrastructure Regulations (the **CIL Regs**) provides that:

*“A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:*

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

This test is enshrined in legislation and is repeated in the NPPF. This test applies to each obligation.

**National Planning Policy Guidance**

The NPPG includes the following statements in respect of planning obligations:

- *“the local planning authority must ensure that the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind”; and*
- *“The Government is clear that obligations must be fully justified and evidenced”.*

**Responsibility for Compliance with CIL Regs**

The responsibility for granting planning permission, and for determining whether a planning obligation complies with Regulation 122 of the CIL Regs, rests with the local planning authority.

Therefore, responsibility for compliance with the legal tests lies with Cherwell District Council (**CDC**) as local planning authority, and not Oxfordshire County Council (**OCC**) as local highway authority.

CDC must ensure that the planning obligations meet the relevant legal tests set out above.

**The Heads of Terms**

The Applicant’s Planning Statement included draft Heads of Terms. The Heads of Terms have been amended from those contained within the Planning Statement as the applicant feels that it is more

appropriate for the following works to be funded through a financial contribution rather than through section 278 works. The works are the:

- installation of SCOOT traffic signal system for Castle Street/Southam Road corridor;
- provision of new bus stop and shelter and associated civil works on north side of Cherwell Drive river over bridge; and
- contribution to matrix signage for parking

The updated Heads of Terms are listed at Appendix A, and we note that OCC's response of 25 July 2014 refers to the Heads of Terms (which are included at Appendix B).

The two sets of Heads of Terms are substantially similar, save for the fact that OCC has included reference to a public transport contribution which appears to be linked to parking management. We assume that this contribution will be in relation to car parking, as this is a contribution which OCC has sought previously. For the reasons set out below, the applicant is of the firm view that this obligation does not pass the legislative tests.

### **Obligations Previously Proposed by OCC**

OCC had previously sought a public transport contribution of £6,240,000. The applicant's position is that this is not necessary and/or is not fairly and reasonably related to the development.

Paragraph 5.42 of the Supplemental Committee Report states that: "*the applicants seem to assume that this shortfall can be met by using allegedly under-utilized space*". The detailed work which the applicant has put into their analysis is not an assumption and is based on robust evidence and the worst case scenario. Similarly, the under-utilisation of car parking is not alleged, it is proven.

Our view is that a public transport contribution along the lines previously sought is not fairly and reasonable related to the development. This is a town centre development in an area where there is an oversupply of car parking spaces, as illustrated by the applicant's transport assessment. CDC is seeking to designate the site as a town centre site in the Cherwell Local Plan 2006 to 2031 submission which CDC issued for examination in public in January 2014.

For a detailed response on the issue of car parking, please see:

- MJM's Response to OCC Key Concerns Correspondence Dated 26th June 2014; section 4.0;
- MJM's Response To OCC Interim Concerns 21st July 2014; section 5; and
- MJM's 5764 – Castle Quay, Banbury - Construction Phase Car Park Assessment.

OCC's previous assessment which included a request for a public transport contribution was largely underpinned by the use of out of town measures and the use of maximum car parking for an out of town centre site. This does not take account of the actual location of the site.

The documents listed above, and in particular the sections referred to, all demonstrate that there is, and will remain to be, an oversupply of car parking. In addition, these documents are all based on the absolute worst case scenario of trip generation in order to allow CDC to understand impact. The applicant considers that it would be perverse to look to overprovide in a sustainable location, which the Council recognise should be town centre.

OCC's previous request for £6,240,000 was based on an assessment of the "shortfall" in terms of car parking spaces which may be generated by the development but which took no account of the existing spare capacity local to the development that was verified by undertaking peak period surveys. The applicant also notes that OCC had previously sought the maximum sum permitted by way of this contribution (giving a range of £5k to £10k without justifying the source of the figures and seeking £10k per space) which, again, the applicant considers unnecessary.

For the reasons set out above and in the documentation referred to, the applicant considers that there is no basis for CDC to conclude that contribution to be necessary and/or fairly and reasonably related to the development.

To summarise:

1. The applicant does not accept that a significant public transport contributions is necessary;
2. If CDC resolve that a public transport contribution is required, this must be necessary and must fairly and reasonably relate to the development and the scale of mitigation required; and
3. The decision on the level of public transport contribution required, and in respect of compliance with Regulation 122 of the CIL Regs, rests with CDC.

In addition, a further contribution is being sought for junction improvements at Bridge St/Cherwell St/Concorde Avenue; this is included within the committee report. The applicant considers that the contribution previously sought by OCC (of £89,673.16) was unjustifiably high when considered against contributions sought by other developments generating more traffic.

A comparison of the combined am and pm increases in traffic associated with the Banbury Station development against those associated with the proposed Castle Quay development indicates that 77% of the contribution agreed for the Banbury Station development could be justified for the Castle Quay. The contribution set for the Banbury Station development was agreed as £72,770. Therefore, the applicant feels that an appropriate contribution for the Bridge St /Cherwell St /Concorde Avenue junction would be £56,033 and that this sum would fairly and reasonably relate to the scale of the Castle Quay development.

The contribution towards the improvement scheme on Henneff Way/Ermont Way can only be calculated once the findings of the Transport Assessment have been agreed with OCC.

OCC had previously sought a general contribution to Banbury Transport Strategy of £589,984 based on CDC's draft SPD. This is inappropriate as it is based on a draft SPD (dated July 2011). The applicant notes that this is not included in the report to committee, which it considers appropriate.

The applicant notes that the committee report recommends that approval be granted subject to the applicant successfully addressing the concerns raised by OCC.

The applicant reserves the right to make further comment when OCC responds substantially to the material which the applicant has provided.

### **Stages of Development**

Regardless of what the contributions relate to, the phasing of contributions in relation to different stages needs to be agreed in principle.

A phasing/staging condition is to be included within the planning conditions in the decision notice. Condition 24 (phasing) is included in the draft decision notice attached, although it is undrafted.

It is appropriate that any planning obligations are split and payable in relation to the occupation of the relevant scheme elements and not as one bulk sum. In relation to transport related obligations and based on trip generation splits, the applicant's consultants estimate that the split should be as follows:

- Hotel 9 %
- Cinema 15%
- A3 Units 6%
- Supermarket 70 %

## APPENDIX A

### **The Applicant's Heads of Terms**

The Applicant has included the following Heads of Terms in its Planning Statement

- Transport / highway financial contribution to be paid prior to the first occupation of the development comprising:
  - contribution towards Bridge Street/Cherwell Street improvement scheme;
  - contribution towards Hennef Way/Concorde Avenue and Hennef Way/Ermont Way improvement scheme;
  - travel plan monitoring fee;
  - commitment to opening up a pedestrian route / pedestrian routes through CQ;
  - commitment to tow path enhancements;
  - submission of detailed Travel Plans prior to occupation;
  - installation of SCOOT traffic signal system for Castle Street / Southam Road corridor;
  - provision of new bus stop and shelter and associated civil works on north side of Cherwell Drive river overbridge; and
  - contribution to matrix signage for parking
- Obligations to enter into the following legal agreements:
  - Section 278 Agreement for works on the public highway. This will include the:
    - realignment of Spiceball Park Road carriageway;
    - replacement of the roundabout at the south end of Spiceball Park Road;
    - new pedestrian infrastructure;
    - traffic calming features;
    - road markings;
    - street-lighting;
    - drainage;
    - highway signage to provide directions for service vehicles to CQ1 and CQ2
    - bus stop on Cherwell Drive;
    - new bus shelter & bus stop markings;
    - pedestrian crossing improvements;
    - car parking signage; and
    - works to re-surface canal side adopted footway in area of cinema /A3 units
- Section 38 Agreement for the adoption of private land for use as public highway.

**APPENDIX B**  
**OCC Heads of Terms**

- Contribution to Banbury Area Transport Strategy, to include the following schemes:
  - Contribution towards Bridge Street/ Cherwell Street Improvement Scheme.
  - Contribution towards Hennef Way/ Concorde Avenue and Hennef Way Improvement Scheme.
- Public transport contribution (parking management tbc).
- Improvements identified in the pedestrian/ cycle audit.
- Travel Plan monitoring fee.
- Commitment to opening up pedestrian routes through Castle Quay.
- Commitment to tow path enhancements.
- Submission of detailed Travel Plans prior to occupation, and a commitment for occupiers to implement.
- Off-site mitigation measures to be confirmed which will be secured under S106 and subject to a S278 Agreement.