

Committee: Planning Committee
Date: Thursday 19 May 2011
Time: 4.00 pm
Venue: Bodicote House, Bodicote, Banbury, OX15 4AA

Membership

Councillor Rose Stratford (Chairman)	Councillor Alastair Milne Home (Vice-Chairman)
Councillor Fred Blackwell	Councillor Ken Attack
Councillor Colin Clarke	Councillor Tim Emptage
Councillor Mrs Catherine Fulljames	Councillor Michael Gibbard
Councillor Chris Heath	Councillor David Hughes
Councillor Russell Hurle	Councillor Mike Kerford-Byrnes
Councillor James Macnamara	Councillor George Parish
Councillor D M Pickford	Councillor G A Reynolds
Councillor Trevor Stevens	Councillor Lawrie Stratford

Substitutes

Councillor Les Sibley	Councillor Barry Wood
Councillor Luke Annaly	Councillor Norman Bolster
Councillor Andrew Fulljames	Councillor Timothy Hallchurch MBE
Councillor Maurice Billington	Councillor Kieron Mallon
Councillor P A O'Sullivan	Councillor Diana Edwards
Councillor Nicholas Turner	

AGENDA

- 1. Apologies for Absence and Notification of Substitute Members**
- 2. Declarations of Interest**

Members are asked to declare any interest and the nature of that interest which they may have in any of the items under consideration at this meeting

3. Petitions and Requests to Address the Meeting

The Chairman to report on any requests to submit petitions or to address the meeting.

4. Urgent Business

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

5. Minutes (Pages 1 - 9)

To confirm as a correct record the Minutes of the meeting of the Committee held on 14 April 2011.

Planning Applications

6. **Land North West of Launton Road Roundabout Adjoining Skimmingdish Lane Caversfield (Pages 12 - 26)** **10/01659/REM**
7. **Land Between Birmingham London Rail Line and Gavray Drive, Bicester (Pages 27 - 80)** **10/01667/OUT**
8. **Butchers Meadow, Balscote, Oxfordshire, OX15 6EX (Pages 81 - 96)** **10/01921/F**
9. **Butchers Meadow, Balscote, OX15 6EX (Pages 97 - 102)** **10/01923/OBL**
10. **Land north of Fringford, west of A4421, Shelswell Park, Fringford (Pages 103 - 122)** **11/00177/F**
11. **35 The Rydes, Bodicote (Pages 123 - 128)** **11/00230/F**
12. **Unit 1 Adj Topps Tiles, Southam Road, Banbury (Pages 129 - 139)** **11/00266/F**
13. **Unit 1 Adj Topps Tiles, Southam Road, Banbury (Pages 140 - 151)** **11/00267/F**
14. **Corner Meadow, Farnborough Road, Mollington, Banbury (Pages 152 - 162)** **11/00293/F**
15. **The Old Rectory, Mere Road, Finmere, Buckingham (Pages 163 - 169)** **11/00483/F**

Tree Preservation Orders

16. **Tree Preservation Order No 05/2011 Walnut Tree at 4 Gulley Row, Merton (Pages 170 - 181)**

Report of Strategic Director Planning, Housing & Economy

Summary

To seek the confirmation of an opposed Tree Preservation Order (no.05/2011) relating to a Walnut tree at 4 Gulley Row, Merton.

Recommendation

The Planning Committee is recommended:

- (1) To confirm Tree Preservation Order (no.05/2011) without modification in the interest of public amenity.

Enforcement Action

17. Quarterly Enforcement Report (Pages 182 - 193)

Report of the Strategic Director Planning, Housing and Economy

Summary

To inform and update Members of the progress of outstanding formal enforcement cases and to inform Members of reviews caseload statistics.

Recommendation

The Planning Committee is recommended to:

- (1) Accept this report.

Review and Monitoring Reports

18. Decisions Subject to Various Requirements (Pages 194 - 197)

Report of the Strategic Director Planning, Housing and Economy

Summary

This report aims to keep members informed upon applications which they have authorised decisions upon to various requirements which must be complied with prior to the issue of decisions.

An update on any changes since the preparation of the report will be given at the meeting.

Recommendation

The Planning Committee meeting is recommended to:

- (1) Accept the position statement.

19. **Appeals Progress Report** (Pages 198 - 202)

Report of the Strategic Director Planning, Housing and Economy

Summary

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged, Public Inquiries/hearings scheduled or appeal results achieved.

Recommendation

The Planning Committee is recommended to:

- (1) Accept the position statement.

Councillors are requested to collect any post from their pigeon hole in the Members Room at the end of the meeting.

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to

democracy@cherwellandsouthnorthants.gov.uk or 01295 221589 / 01295 227956 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Evacuation Procedure

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact Michael Sands, Legal and Democratic Services michael.sands@cherwell-dc.gov.uk (01295) 221554

Sue Smith
Chief Executive

Published on Wednesday 11 May 2011

Agenda Item 5

Cherwell District Council

Planning Committee

Minutes of a meeting of the Planning Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 14 April 2011 at 4.00 pm

Present: Councillor Fred Blackwell (Chairman)
Councillor Rose Stratford (Vice-Chairman)

Councillor Ken Atack
Councillor Colin Clarke
Councillor Mrs Diana Edwards
Councillor Mrs Catherine Fulljames
Councillor Chris Heath
Councillor Alastair Milne Home
Councillor James Macnamara
Councillor D M Pickford
Councillor G A Reynolds
Councillor Chris Smithson
Councillor Trevor Stevens
Councillor Lawrie Stratford

Substitute Members: Councillor David Hughes (In place of Councillor Michael Gibbard)

Officers: John Hoad, Strategic Director - Planning, Housing and Economy
Bob Duxbury, Development Control Team Leader
Ross Chambers, Solicitor
Laura Bailey, Planning Officer
Michael Sands, Democratic and Scrutiny Officer

178 **Declarations of Interest**

Members declared interest with regard to the following agenda items:

6. Land west of Begbroke Science Park and east of Woodstock Road, Yarnton.

Councillor Trevor Stevens, Personal, as he had previously been involved in the application.

7. Bicester Golf & Country Club, Akeman Street, Chesterton, Bicester, OX26 1TE.

Councillor D M Pickford, Personal, as a Member of Bicester Town Council.

Councillor James Macnamara, Prejudicial, as a Member of the Golf and Country Club.

Councillor Lawrie Stratford, Personal, as a Member of Bicester Town Council.

Councillor Rose Stratford, Personal, as a Member of Bicester Town Council.

8. 35 The Rydes, Bodicote.

Councillor Chris Heath, Personal, as she had previously been involved in the application.

9. British Bakels, Granville Way, Bicester.

Councillor D M Pickford, Personal, as a Member of Bicester Town Council.

Councillor Lawrie Stratford, Personal, as a Member of Bicester Town Council.

Councillor Rose Stratford, Personal, as a Member of Bicester Town Council.

10. 31 North Street, Bicester.

Councillor D M Pickford, Personal, as a Member of Bicester Town Council.

Councillor Lawrie Stratford, Personal, as a Member of Bicester Town Council.

Councillor Rose Stratford, Personal, as a Member of Bicester Town Council.

11. 31 North Street, Bicester.

Councillor D M Pickford, Personal, as a Member of Bicester Town Council.

Councillor Lawrie Stratford, Personal, as a Member of Bicester Town Council.

Councillor Rose Stratford, Personal, as a Member of Bicester Town Council.

179 **Petitions and Requests to Address the Meeting**

The Chairman advised that petitions and requests to address the meeting would be dealt with at each item.

180 **Urgent Business**

There was no urgent business.

181 **Minutes**

The Minutes of the meeting held on 24 March 2011 were agreed as a correct record and signed by the Chairman.

Land west of Begbroke Science Park and east of Woodstock Road, Yarnton

The Committee considered a report for an access road and all traffic movement's, junctions, landscaping and associated works.

The Committee considered the issue of light pollution and also expressed concern regarding the traffic arrangements.

In reaching their decision the Committee considered the Officers report, presentation and written update.

Resolved

That application 11/00069/F be approved subject to:

- i) The expiry of the consultation period (28 April 2011) and there being no further representations that are additional material consideration not already covered as part of this report.
- ii) Referral to SoS as departure procedure

The following conditions:

- (1) 1.4A Full Permission: Duration Limit (3 years) (RC2)
- (2) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans:
31327/PDL/001 Rev C, 31327/LE/003 Rev A and 31327/PHL/004 Rev D
- (3) The development hereby permitted shall be carried out in accordance with the recommendations set out in the Ecological Assessment Survey and Bat Building Survey of the Begbroke Science Park site by Applied Ecology dated November 2011 and February 2011 (respectively) unless otherwise agreed in writing by the Local Planning Authority. And that during the construction phase of the development best practice construction methods be applied ie. open trenches be covered at night or a means of escape be provided to ensure that foraging badgers do not become trapped and access to setts must remain unobstructed at all times.
- (4) That before any works commence on site badger proof fencing shall be erected to form a boundary between the construction zone and the section of hedgerow in which the badger sett is located and as illustrated on Figure 3 of the Ecological Assessment Survey by Applied Ecology dated November 2011.
- (5) That prior to the demolition of the two buildings within the Science Park, a further bat survey including emergence survey, shall be undertaken during the bat active season (May-August), details of which shall be

submitted to and approved in writing by the Local Planning Authority, and if any bats are found to be present, a method statement shall be provided with the bat survey details of how and when the building is to be demolished and how the bats are to be removed.

- (6) That prior to the first use of the proposed A44 junction and access road the existing means of access onto Sandy Lane shall be permanently stopped up by the means to be agreed; details of which shall be submitted to and approved in writing the Local Planning Authority within 3 months of the date of this permission and in accordance with the highway authority's specifications and shall not be used by any vehicular traffic whatsoever (except in emergencies).
- (7) That prior to the first use of the proposed A44 junction and access road it shall be formed, laid out and to the approval of the Local Planning Authority and constructed strictly in accordance with the highway authority's specifications and that all ancillary works specified shall be undertaken.
- (8) That prior to the first use of the access road hereby permitted an updated Travel Plan shall be submitted to and approved in writing by Local Planning Authority and implemented in accordance with the approved details.
- (9) That no connection for vehicular or pedestrian traffic shall be made from the approved road (other than for the Begbroke Science Park) for which it is designed without the prior express planning consent of the Local Planning Authority.
- (10) That no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme for landscaping the site and tree protection measures for retained trees 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,
 - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
 - (c) a plan that shows the position, crown spread and Root Protection Area (paragraph 5.2.2 of BS5837) of every retained tree on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan.
 - (d) the details of each retained tree as required at paragraph 4.2.6 of

BS5837 in a separate schedule.

- (e) the details and positions (shown on the plan at paragraph (c) above) of the Ground Protection Zones (section 9.3 of BS5837).
 - (f) the details and positions (shown on the plan at paragraph (c) above) of the Tree Protection Barriers (section 9.2 of BS5837), identified separately where required for different phases of construction work (e.g. demolition, construction, hard landscaping). The Tree Protection Barriers must be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase.
- (11) That 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; and that any trees and 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.
- (12) Prior to the commencement of the development and any archaeological investigation, a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.
- (13) Prior to the commencement of the development, and following the approval of the Written Scheme of Investigation referred to in condition 12, a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of archaeological evaluation and mitigation shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority as soon as practically possible following the completion of the on site investigation. Providing that the timing of the archaeological evaluation and mitigation is carried out in accordance with the wording of this condition, the submission of the full report may follow the commencement of the development on site.
- (14) That notwithstanding the approved plans, no additional lighting shall be provided along the access road hereby permitted without the prior

express permission of the Local Planning Authority.

- (15) The development shall proceed in accordance with the Flood Risk Assessment prepared by WSP Development and Transportation dated January 2011 accompanying the application unless otherwise previously approved in writing by the Local Planning Authority.

183 **Bicester Golf & Country Club, Akeman Street, Chesterton, Bicester, OX26 1TE**

The Committee considered a report for the removal of condition two of 09/01357/F.

The Committee was satisfied with the evidence presented.

In reaching their decision, the Committee considered the Officers report and presentation.

Resolved

That application 11/00157/F be approved.

184 **35 The Rydes, Bodicote**

The Committee considered a report for an extension and alterations.

The Committee requested that the application be deferred to enable a site visit to take place.

In reaching their decision, the Committee considered the Officers report and presentation.

Resolved

That application 11/00230/F be deferred to enable a site visit to take place.

185 **British Bakels, Granville Way, Bicester**

The Committee considered a report for an extension to the existing factory to create a goods in warehouse facility.

The Committee expressed concern regarding the issue of drainage for the proposed development.

In reaching their decision the Committee considered the Officers report, presentation and written update.

Resolved

That application 11/00253/F be approved subject to:

- (1) SC 1.4A (RC2) [Time limit]
- (2) 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: Drawing no's 3927-001 P1, 3927-002 P2, 3927-006 P2, 3927-005 P2, 3927-004 P1, 3927-003 P1, 3927-007 P2 and site specific flood risk assessment by JPP Consulting dated January 2011.
- (3) Prior to the first use of the building hereby permitted, the parking and turning areas, approved under application no. 09/01775/F, shall be provided in accordance with the approved details and subsequently shall be retained unobstructed except for the parking of vehicles at all times thereafter. (RC13BB)
- (4) SC 4.21AA (RC19AA) [Surface/Foul Water disposal]

186

31 North Street, Bicester

The Committee considered a report for the demolition of the existing rear extensions and outbuildings and removal of the prefabricated garaging and the development of three dwellings, incorporating the original dwelling.

Mr Ian Mills spoke in favour of the application as the applicant's agent.

The Committee expressed concern regarding the size of the proposed development and the impact it may have on neighbouring properties. Members also considered the lack of parking provision at the site.

In reaching their decision the Committee considered the Officers report, presentation and written update.

Resolved

That application 11/00279/F be refused for the following reasons:

- (1) The proposed development would by reason of its scale, bulk and appearance result in an unsympathetic and incongruous extension to the dwelling which would be detrimental to the historic character and appearance of the dwelling, the surrounding area and would not preserve or enhance the character and appearance of the Conservation Area. As such, the proposal is considered to be contrary to PPS5: Planning for the Historic Environment, Policies BE1 and BE6 of the South East Plan 2009, Policies C28 and C30 of the Adopted Cherwell Local Plan and Policies D3, EN39 and EN40 of the Non-Statutory Cherwell Local Plan.
- (2) The proposed extension by reason of its height, length and proximity to the neighbouring properties, will appear overbearing when viewed from both the garden and from within the dwelling of no. 33 North Street and would result in an unacceptable level of overlooking into the rear

windows of no. 1 Hailles Gardens. This will have a significant and adverse effect on the amenities the occupiers of these properties currently enjoy, contrary to Policies CC1 and CC6 of the South East Plan, Policy C30 of the adopted Cherwell Local Plan and Policy D6 of the Non-Statutory Cherwell Local Plan 2011

187 **31 North Street, Bicester**

The Committee considered a report for the demolition of the existing rear extensions and outbuildings and the removal of prefabricated garaging.

The Committee was satisfied with the evidence presented.

In reaching their decision the Committee considered the Officers report, presentation and written update.

Resolved

That application 11/00385/CAC be approved subject to the following condition:

- (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: Drawing no. 1104/5.

188 **Begbroke Business and Science Park**

The Committee considered a report which sought to inform Members of the history of planning decisions related to the site and to invite Members to re-affirm their acceptance of this proposed development.

In reaching their decision, the Committee considered the Officers report and presentation.

Resolved

- (1) That the report be noted
- (2) That Members' willingness to grant planning permission for the long-term phase of development of research buildings at Begbroke Business Park, originally proposed under planning application no. 01/00622/OUT subject to a legal agreement as previously sought, be re-affirmed.

Councillor Mrs Fulljames requested that her abstention from the vote be recorded as she had not been present for the whole of the debate.

189 **Tree Preservation Order No. 04/2011 Ash, Tulip, Walnut and one group of Holly and Yew trees at Hanwell Castle, Hanwell**

The Committee considered a report of the Strategic Director Planning, Housing and Economy which sought the confirmation of an unopposed Tree Preservation Order relating to an Ash, Tulip, Walnut tree and one group of Holly and Yew trees at Hanwell Castle, Hanwell.

Resolved

That Tree Preservation Order No. 04/2011 be confirmed without modification.

190 **Decisions Subject to Various Requirements**

The Committee considered a report which updated Members on decisions which were subject to various requirements.

Resolved

That the position statement be accepted.

191 **Appeals Progress Report**

The Committee considered a report which updated Members on applications where new appeals had been lodged, public inquiries/hearings scheduled or appeal results received.

Resolved

That the position statement be noted.

The meeting ended at 5:25 pm

Chairman:

Date:

PLANNING COMMITTEE

19 May 2011

PLANNING APPLICATIONS INDEX

The Officer's recommendations are given at the end of the report on each application.

Members should get in touch with staff as soon as possible after receiving this agenda if they wish to have any further information on the applications.

Any responses to consultations, or information which has been received after the application report was finalised, will be reported at the meeting.

The individual reports normally only refer to the main topic policies in the Cherwell Local Plan that are appropriate to the proposal. However, there may be other policies in the Development Plan, or the Local Plan, or other national and local planning guidance that are material to the proposal but are not specifically referred to.

The reports also only include a summary of the planning issues received in consultee representations and statements submitted on an application. Full copies of the comments received are available for inspection by Members in advance of the meeting.

Legal, Health and Safety, Crime and Disorder, Sustainability and Equalities Implications

Any relevant matters pertaining to the specific applications are as set out in the individual reports.

Human Rights Implications

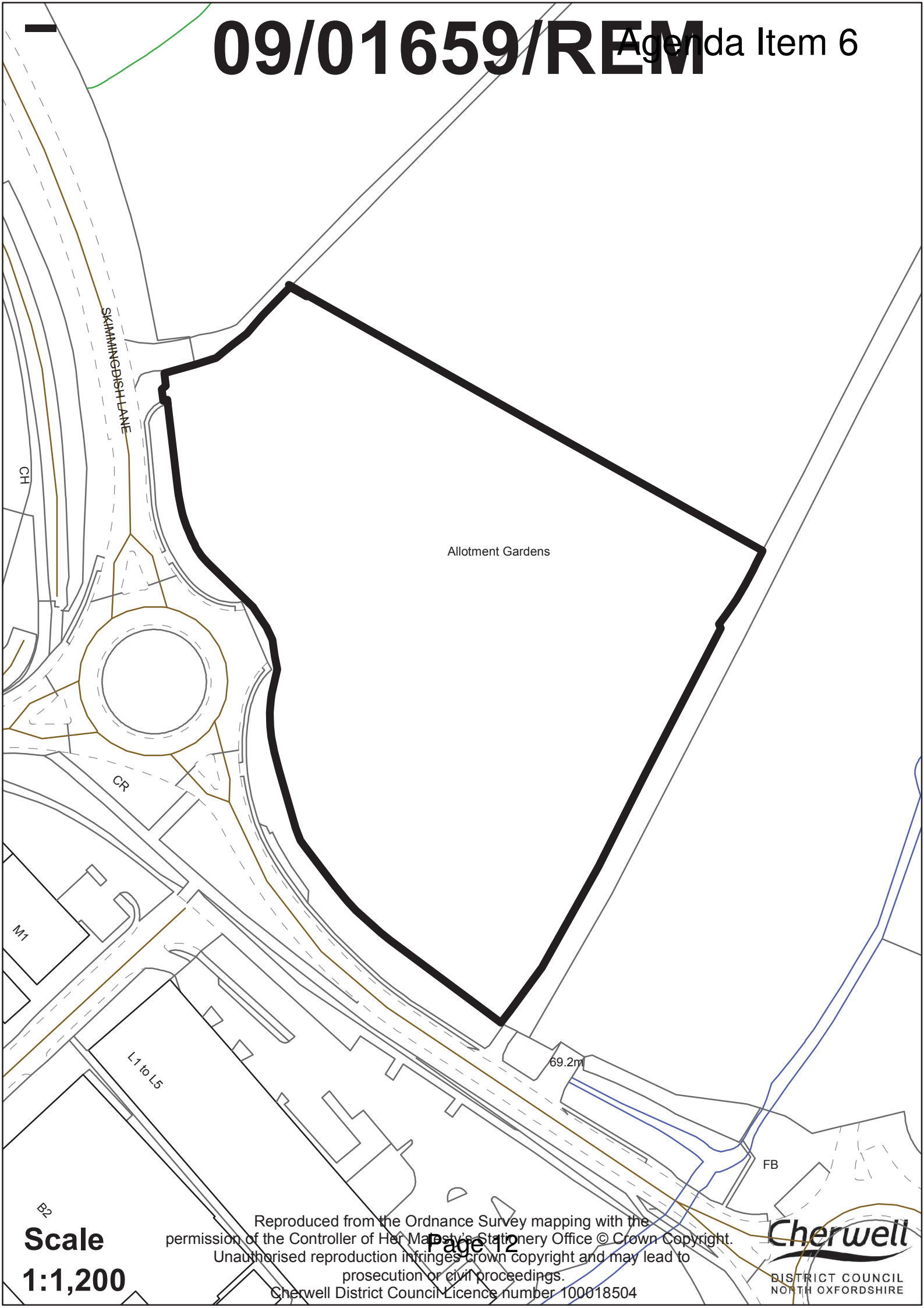
The recommendations in the reports may, if accepted, affect the human rights of individuals under Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights. However, in all the circumstances relating to the development proposals, it is concluded that the recommendations are in accordance with the law and are necessary in a democratic society for the protection of the rights and freedom of others and are also necessary to control the use of property in the interest of the public.

Background Papers

For each of the applications listed are: the application form; the accompanying certificates and plans and any other information provided by the applicant/agent; representations made by bodies or persons consulted on the application; any submissions supporting or objecting to the application; any decision notices or letters containing previous planning decisions relating to the application site.

Applications

	Site	Application No.	Ward	Recommendation	Contact Officer
6	Land North West Of Launton Road Roundabout Adjoining Skimmingdish Lane Caversfield	09/01659/REM	Launton	Approval	Andrew Lewis
7	Land Between Birmingham London Rail Line and Gavray Drive, Bicester	10/01667/OUT	Bicester South	Approval	Rebecca Horley
8	Butchers Meadow, Balscote, Oxfordshire, OX15 6EX	10/01921/F	Wroxton	Approval	Emily Shaw
9	Butchers Meadow, Balscote, OX15 6EX	10/01923/OBL	Wroxton	To rescind legal agreements dated the 10 August 2001 and 12 June 2007 and replace with new agreement	Emily Shaw
10	Land north of Fringford, west of A4421, Shelswell Park, Fringford	11/00177/F	Fringford	Approval	Caroline Roche
11	35 The Rydes, Bodicote	11/00230/F	Bloxham & Bodicote	Approval	Simon Dean
12	Unit 1 Adj Topps Tiles, Southam Road, Banbury	11/00266/F	Banbury Grimsbury and Castle	Approval	Jane Dunkin
13	Unit 1 Adj Topps Tiles, Southam Road, Banbury	11/00267/F	Banbury Grimsbury and Castle	Refusal	Jane Dunkin
14	Corner Meadow, Farnborough Road, Mollington, Banbury	11/00293/F	Cropredy	Approval	Jane Dunkin
15	The Old Rectory, Mere Road, Finmere, Buckingham	11/00483/F	Fringford	Refusal	Rebecca Horley



Allotment Gardens

SKIMMINGBISH LANE

CR

M1

L1 to L5

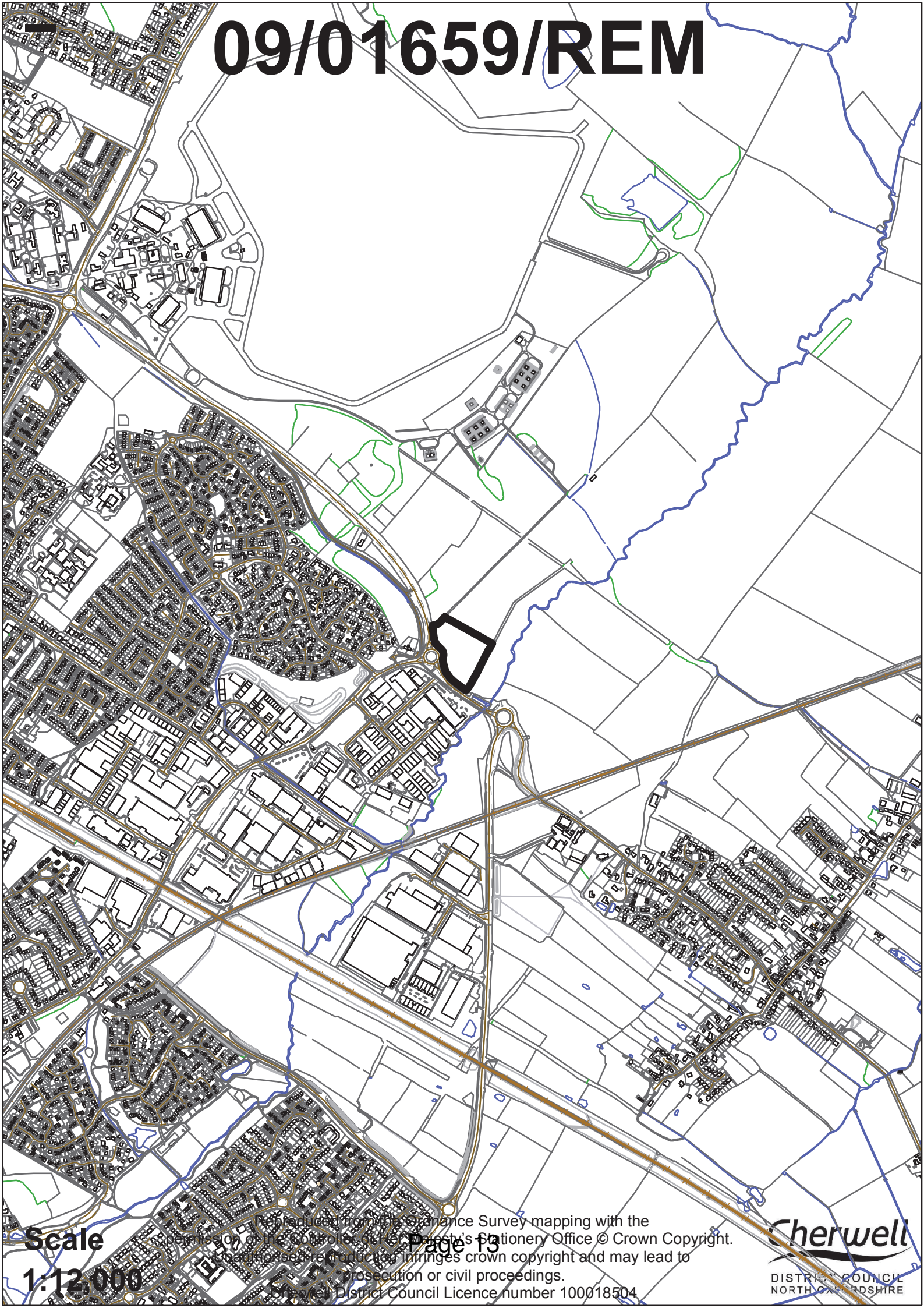
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Scale
1:1,200

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09/01659/REM



Scale

1:12,000

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Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Application No: 09/01659/REM	Ward: Launton	Date Valid: 18.11.2009
Applicant:	The Oxford Diocesan Board of Finance	
Site Address:	Land North West Of Launton Road Roundabout Adjoining Skimmingdish Lane Caversfield	

Proposal: Reserved Matters (Ref: Outline 05/01563/OUT) B1 Office development with associated parking, turning and landscaping areas

1. Site Description and Proposal

- 1.1 The application site is approximately 1.7 hectares in size and lies on the north side of Skimmingdish Lane (A4421), the north circular road around Bicester. When originally constructed, this road was designed with a series of roundabouts that provided access to parcels of land identified for future development including the current application site. As a result there is a roundabout fronting the site with a spur already available to provide access into it. Skimmingdish is also a heavily engineered road with wide carriageway, deep verges and footpath/cycle track along large parts of it.
- 1.2 The site is open and of an unkempt appearance, it previously having been used as allotments although that use ceased in approximately 2007 having been in decline for a number of years prior to that. A public footpath runs along the western boundary and there are cultivated fields to the north and west. To the east is a small strip of open land outside the application site, the eastern boundary of which contains a small brook lined by trees and other vegetation. The character and appearance of the immediate area to the north of Skimmingdish Lane is one of rural openness although beyond the adjacent fields lies RAF Bicester, a designated conservation area.
- 1.3 South of Skimmingdish Lane is the Launton Lane Industrial Estate. Although buildings on it are primarily industrial there is an increasing mix of uses including recent retail units having been constructed, petrol filling stations and car sales, etc. The buildings are generally two storeys in height and mainly built in a modern, utilitarian style with simple materials, metal cladding is pre-dominant opposite the site.
- 1.4 The current application seeks approval for all matters reserved on the outline permission. A new entrance spur is created off the existing roundabout with nine separate buildings, all to be in Business Use (Class B1) and providing 5857 sq m of floorspace, laid out fronting new internal access roads off which are a series of parking spaces. Large swathes of landscaping are proposed around the edge of the site but particularly on the eastern boundary which includes a large area of open space, all part of the flood risk action plan, as explained in the detailed assessment below. A toucan crossing is proposed to improve connectivity for pedestrians and cyclists across Skimmingdish Lane.

- 1.5 The application includes a Design and Access Statement (DAS), Arboricultural Survey, Landscape Statement (LS), Flood Risk Assessment and Drainage Strategy (FRA), and Transport Statement. The layout has been amended during the processing of the application and addenda have been received for the DAS, LS and FRA

2. Planning History	
2.1	This application seeks approval of reserved matters for an outline planning permission granted at appeal in 2007. The permission was for: "Outline - B1 Office development with associated parking, turning and landscaping areas (as supported by additional information received 14/10/05)" (ref: 05/01563/OUT). This permission is also subject of a separate application for renewal although it has been redescribed as: "Erection of 5857 sqm of B1 Office development with associated parking, turning and landscaping areas (renewal of 05/01563/OUT)" (ref: 10/00324/OUT).

3. Application Publicity

- 3.1 The application was advertised in the press and by site on receipt and again following submission of amended plans. Following re-advertisement it was clear for a decision on 14th February. No individual public comments have been received.

4. Consultations (Comments based on the amended plans unless otherwise stated):

4.1 Launton Parish Council

- Considered the above application and resolved that it had no objection to make and no comment to offer.

Bicester Town Council (on the original submission, no comments on the revised submission):

- Welcomes the application
- Concerned that infrastructure cannot service the site
- Concerned about impact on RAF Bicester, visually and flight paths

Head of Building Control and Engineering, CDC:

- Whilst revised details still depart from PPS25 what has been submitted is acceptable for drainage.

Arboricultural Officer, CDC:

- In comparison to the superseded drawing, the amended site layout provides no additional impacts upon the trees and vegetation
- The arboricultural survey emphasises the ecological benefits and screening value of the hedgerow along the south-east edge of the site and provides adequate protective measures for this feature and the trees (T20-T37) within in section 4.0 and on the drawing MFE105-09/1B.
- The remaining trees within the site are not considered worthy of retention and should not be considered a constraint to the development.
- Pre-development treeworks recommended within the report should be

undertaken as specified with protective measures for all retained trees put in place prior to the commencement of any construction activity.

Landscape Officer, CDC

- Revised details acceptable

Oxfordshire County Drainage Engineer:

- Makes comments on some of the details of the scheme (and lack of them or clarity)

Oxfordshire County Council (Highways):

- “The proposed site was granted outline planning permission after an appeal hearing (APP/C3105/A/06/2010115) in March 2007. I understand the only matter determined at this stage was for access; although other details such as the site’s location i.e. sustainability and the provision of a pedestrian crossing facility and new links was agreed in a Statement of Common Ground between the developer and the Local Highway Authority. Consideration has to be given to the site’s history and the existing planning permission; therefore I will only provide comments/a recommendation for the site’s proposed layout and the agreed infrastructure requirements.”
- Access arrangements – the principal of the access into the site from Skimmingdish Lane has already been approved. However the actual construction details have not. The arrangements shown on drawing 2354-1 are acceptable in principal, but will require a separate permission from the Local Highway Authority (LHA) to be constructed on the public highway (S278 legal Agreement). The 7.5m width of the road into the site is acceptable, as is its reduction to 6m into the site (area to be adopted by LHA).
- New footway/cycle links into the site are being provided and will join up with the existing network which is essential and acceptable (may require minor improvements to existing infrastructure to accommodate new footway/cycle links, such as tactile paving).
- A new toucan crossing facility is to be provided by the developer (as shown on drawing 2354-1 & Stuart Michael Associates drawing 2006.2281.006) as part of the highway works for this site (to be included within S278 Agreement).
- Layout & Parking Levels – the proposed layout in terms of vehicle use is acceptable i.e. adequate areas for vehicle turning. The manoeuvring areas behind the proposed parking areas are also acceptable (around 6m). The parking levels proposed for the development are to an acceptable standard.
- Cycle parking should be to the appropriate standard i.e. 1 space (Sheffield stand style) per 150m² as well as being secure and sheltered. Ideally shower facilities etc should be provided within the offices to encourage cycling.
- Travel Plan – this will be required

Environment Agency:

- “We are able to withdraw our objection on flood risk grounds subject to conditions. We understand that Cherwell District Council (CDC) would find a layout with all of the buildings located towards the North West of the site, outside of the functional floodplain, unacceptable due to other planning constraints. Provided that CDC maintain this stance, we will accept that some of the buildings may remain in the functional floodplain as shown in the amended layout drawings, subject to extensive mitigation measures.
- As discussed in previous correspondence, our new modelling shows a large

part of this site to be within the functional floodplain, defined by PPS25 as land where water flows or is stored during times of flood. In these areas PPS25 guides developers and Local Planning Authorities (LPAs) to reduce flood risk through the layout and form of development and to relocate existing development elsewhere. We would therefore request in responding to the council that planning officers record our concerns and that these are included in any planning report.”

Relevant Planning Policies

5.1 National Guidance:

- Planning Policy Statement 1 Delivering Sustainable Development (PPS1)
- Planning Policy Statement 4 Planning for Sustainable Economic Growth (PPS4)
- Planning Policy Guidance 13 Transport (PPG13)
- Planning Policy Statement 25 Development and Flood Risk (PPS 25)
- Planning Policy Statement 5 Planning for the Historic Environment (PPS5)

5.2 Regional Spatial Strategy for the South East (The South East Plan) 2009

- Policy RE3: Employment and Land Provision
- Policy CC6: Sustainable Communities and Character of the Environment
- Policy CC7: Infrastructure and Implementation
- Policy BE1: Management for an Urban Renaissance
- Policy BE4: Role of Small Market Towns
- Policy CO1: Core Strategy
- Policy CO2: Economy
- Policy CO5: Transport

5.3 Adopted Cherwell Local Plan November 1996 (ACLPL 1996)

- Policy EMP1: Employment development
- Policy C28: Layout, design and external appearance of new development
- Policy C14: Trees and Landscaping
- Policy TR5: Parking
- Policy TR20-Road Improvements-Skimmingdish Lane

5.4 Non-Statutory Cherwell Local Plan 2011 (NSCLP 2011)

- Policy D1: Urban Design Objectives
- Policy D3: Local Distinctiveness
- Policy D4: Quality of Architecture
- Policy TR11: Parking
- Policy EN1: Conserve/Enhance the Environment
- Policies EN34, EN35: Landscape Character
- Policy EN36: Landscape Enhancement
- Policies EN13/EN14/EN15: Watercourses/Flooding

5.5 The following policy documents are also relevant to the consideration of the application;

- RAF Bicester Conservation Appraisal 2008

- 6.2 The Council had refused permission for four main reasons: flood risk (although this was later withdrawn), loss of allotments, speculative employment on an unallocated development site and unsustainable development outside of the built up limits of Bicester. At the Public Inquiry the Inspector considered the main issue to be whether the proposed employment use outweighed planning policies, adopted and emerging, the need for the development and the loss of allotment land.
- 6.3 The allotment argument quickly fell as they were not protected, and the Inspector considered there to be sufficient provision in the area with no real demand for such use.
- 6.4 The main arguments therefore centred, firstly, on policy; the Inspector felt there was a planning vacuum and that there was no prospect of a comprehensive development, as envisaged in the ACLP 1996, following the designation of RAF Bicester as a Conservation Area, the change in a location of the NSCLP 2011, the move towards developing SW Bicester and an appeal decision to allow residential development at Gavray Drive, a large allocated employment site.
- 6.5 Secondly, with regard to landscape, the Inspector carefully argued that despite the proposal being “an isolated and sporadic form of development” its effect would be “localised and limited”. He felt there was adequate separation to the airfield and its open setting, character and appearance preserved.
- 6.6 And thirdly, on “need”, the opportunity for employment development was severely constrained yet there was a poor ratio between jobs and employment with significant commuting out of Bicester as a result. It was also agreed that the site was a relatively sustainable location.
- 6.7 The Inspector concluded that the proposal, whilst contrary to the countryside protection policies of the ACLP 1996, was acceptable because there was a pressing need for B1 employment land which outweighed all other considerations. Permission was granted subject to a limited number of conditions the most significant of which limited buildings to two storeys and restricted development in the flood zone area. A toucan crossing and travel plan were also required.

Main Issues

- 6.8 As stated above, the site is regarded as a sustainable location and acceptable for B1 development. The main issues are therefore whether the details of the scheme, in particular its design and layout, are acceptable and in compliance with the terms and conditions of the appeal decision.

Layout and Floodplain

- 6.9 An illustrative scheme was submitted with the outline application and formed the basis of the current submission. However, following consultation with the Environment Agency (EA) and a re-modelling exercise, there was a radical shift in position arising from changes to the functional floodplain. In fact, the EA requested all new buildings be relocated to the north-west corner of the site, outside of the functional floodplain, a move resisted by the your officers and the applicant due to the likely impact on RAF Bicester, and an inefficient and unsatisfactory visual form

of development. It was also a view challenged by the applicant's drainage engineers.

- 6.10 A compromise position was sought in which the majority of the new buildings were to be located outside of the functional floodplain together with extensive mitigation measures. Flood storage compensation would be provided by lowering land and creating floodable voids beneath buildings.
- 6.11 As a result, whilst the layout remains very much in line with the outline illustrative scheme, the developable footprint has moved west and north. One building has been completely removed from the eastern part of the site and that land is now set aside to be a landscaped swale and in reality will serve as floodplain.
- 6.12 The architect in the revised scheme has achieved a layout where the proposed office buildings still form an active frontage to Skimmingdish Lane and to the new internal road network, with mirrored buildings tight to the entrance forming visual "gateposts". Parking is provided directly off the internal roads together with cycle/refuse stores, all in accessible locations from the roads and to each of the nine buildings. Cellular storage tanks will be provided under the parking spaces in the functional flood plain.
- 6.13 The buildings will all be designed and laid out in large, individual, landscaped plots. Notwithstanding the site being considered a sustainable location at the appeal, the scheme is clearly heavily designed with car borne traffic in mind. However, a new cycle/footway will be created along the frontage to Skimmingdish Lane which will penetrate the site, with two separate segregated routes into the site for pedestrians and cyclists. The internal roads are shared surfaces.
- 6.14 A deep belt of open space available for landscaping surrounds the site. To the rear it is almost 15 metres deep and to the front almost 20 metres.

Design, Appearance and Scale

- 6.15 The nine buildings have been (re)designed following pre application discussions in which advice given was to keep the form of the building simple, reduce the number of different building's designs, limit the palette of materials, and create strong frontage development particularly at the site entrance where a pair of buildings of the same design reflect each other to create a pair of "gateposts". Overall, as a result, the architect has created a scheme in which the individual buildings are laid out internally to create a courtyard feel although fronting Skimmingdish Lane and the main internal road, in a heavily landscaped setting.
- 6.16 There is a consistency that runs through the buildings arising from their scale, appearance, design themes and facing materials:
- 6.17 In compliance with the outline planning permission the nine B1 buildings are all two storeys in height (approximately 7.5m), albeit with projection for lift housing and roof plant. The latter all have the same curved U shaped roof which is replicated on the cycle/refuse stores and creates an attractive feature. The roofs are all flat save for the roof projection. Each building has a similar main entrance and most have a rotunda to act as a focal feature on the elevations. The buildings at the front also reflect a curved form which aims to respond to the gentle bend of Skimmingdish

Lane.

- 6.18 During the processing of the application and following objection from EA, the scheme has been redesigned, in particular the layout, but also elevationally as the buildings are raised 300mm above the predicted flood level and now have voids beneath for flood water storage. Visually the buildings remain largely of the same appearance although adjustments have been made to the entrances as a result. It is not considered they will have any additional impact on the nearby conservation area, which is approximately 300metres distant to the nearest point and over 1 kilometre to the technical area, and of course, they are still two storeys thus compliant with the condition imposed at appeal.
- 6.19 At the pre-application stage the architect was encouraged to use end stops at the end of vistas. Although this has not really been incorporated into the design, at the centre of the development and highly visible from the entrance is a pole mounted sign with dish which is intended to stop the eye.
- 6.20 The number of facing materials has been reduced and now each building has an elevation with large elements of glazing and either render or terracotta tiling for the walls.
- 6.21 At the appeal Inquiry there was criticism that the development of this site was isolated and sporadic. However, the lack of reference or need to relate to surrounding development has given the architect an opportunity to design a scheme that is reflective of its time and with a flexible internal layout internally and externally for the proposed use.

Other Issues

Highways, Access and Parking

- 6.22 The entrance to the site was created with the construction of Skimmingdish Lane and probably in anticipation of a much larger and more comprehensive development including part of the RAF Bicester flying field in line with the CLP 1996. The access road is 7.5 metres wide but this is scaled down as you enter the site. 2 metre cycle/footways also run alongside the road off the main roundabout spur. The internal access roads are 6 metres wide shared surfaced with strategically placed rumble strips.
- 6.23 Two separate routes for cyclists and pedestrians are created into the site, the one linking to a proposed toucan crossing which the applicant is obligated to provide under condition 9 of the appeal decision.
- 6.24 Parking is broken into groups directly accessed off the internal road network. A total of 189 spaces are provided at a ratio of 1:31 sq m, so slightly below the adopted standard, although this site was considered to be a sustainable location at the appeal. Of these, 18 are designed for use by pwd, 9.5% of the total.
- 6.25 Individual cycle sheds are designed for each unit for use by staff and with entrances from buildings to them. In total, provision is made for 72 bicycles of which 54 are safe, secure and sheltered in the sheds with 18 sheffield stands for visitors.

Landscaping

- 6.26 A comprehensive scheme has been produced, amended during processing of the application, which seeks to screen the development and reduce its visual impact both in general and to RAF Bicester and the conservation area. Comprehensive planting is provided on all boundaries and through the site. Outdoor areas will be created within the landscaped areas for staff.

Conclusion

- 6.27 The principle of development and other major issues such as access were all resolved at appeal. The main obstacle to the approval of reserved matters has been the increased flood risk as a result of the EA remodelling the floodplain during the course of this application. The revised layout and design have overcome their concerns, subject to imposition of conditions. The design, scale, appearance and landscaping of the development is considered acceptable. Parking is at an appropriate level. The character and appearance of the conservation area will be preserved.

7. Recommendation																																													
Approve the reserved matters subject to the following conditions:																																													
1	<p>Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following approved plans:</p> <table border="0"> <tr> <td>Location Plan</td> <td>Drawing no-2354-25</td> </tr> <tr> <td>Site Plan</td> <td>Drawing no-2354-12B</td> </tr> <tr> <td>Elevations/Floor Plans-Unit A</td> <td>Drawing no-2354-13B</td> </tr> <tr> <td>Elevations/Floor Plans-Unit B</td> <td>Drawing no-2354-14B</td> </tr> <tr> <td>Elevations/Floor Plans-Unit C1</td> <td>Drawing no-2354-15B</td> </tr> <tr> <td>Elevations/Floor Plans-Unit C2</td> <td>Drawing no-2354-26</td> </tr> <tr> <td>Elevations/Floor Plans-Unit D</td> <td>Drawing no-2354-16B</td> </tr> <tr> <td>Elevations/Floor Plans-Unit E</td> <td>Drawing no-2354-17B</td> </tr> <tr> <td>Elevations/Floor Plans-Unit F</td> <td>Drawing no-2354-18B</td> </tr> <tr> <td>Elevations/Floor Plans-Unit H</td> <td>Drawing no-2354-27</td> </tr> <tr> <td>Elevations/Floor Plans-Unit I</td> <td>Drawing no-2354-21B</td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td>Cycle and Refuse Store</td> <td>Drawing no-2354-22</td> </tr> <tr> <td>Pole Sign</td> <td>Drawing no-2354-23</td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td>Landscape Framework Proposals</td> <td>0385.1.3</td> </tr> <tr> <td>Soft Landscape Proposals</td> <td>0385.1.4</td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td>Schematic Surface Water Drainage Strategy-Drawing 3284.410 Rev B</td> <td></td> </tr> <tr> <td>Floodplain compensation (option 2)-Drawing 3284.502 Rev A</td> <td></td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td colspan="2">Reason - For the avoidance of doubt, to ensure that the development is carried out</td> </tr> </table>	Location Plan	Drawing no-2354-25	Site Plan	Drawing no-2354-12B	Elevations/Floor Plans-Unit A	Drawing no-2354-13B	Elevations/Floor Plans-Unit B	Drawing no-2354-14B	Elevations/Floor Plans-Unit C1	Drawing no-2354-15B	Elevations/Floor Plans-Unit C2	Drawing no-2354-26	Elevations/Floor Plans-Unit D	Drawing no-2354-16B	Elevations/Floor Plans-Unit E	Drawing no-2354-17B	Elevations/Floor Plans-Unit F	Drawing no-2354-18B	Elevations/Floor Plans-Unit H	Drawing no-2354-27	Elevations/Floor Plans-Unit I	Drawing no-2354-21B	 		Cycle and Refuse Store	Drawing no-2354-22	Pole Sign	Drawing no-2354-23	 		Landscape Framework Proposals	0385.1.3	Soft Landscape Proposals	0385.1.4	 		Schematic Surface Water Drainage Strategy-Drawing 3284.410 Rev B		Floodplain compensation (option 2)-Drawing 3284.502 Rev A		 		Reason - For the avoidance of doubt, to ensure that the development is carried out	
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only as approved by the Local Planning Authority, to comply with Policy BE1 of the South East Plan 2009 and to comply with Central Government guidance contained in PPS1: Delivering Sustainable Development.

- 2 That the external walls and roof(s) of the proposed individual buildings shall be constructed in accordance with a schedule of materials and finishes which, together with samples of all facing materials, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the works hereby approved.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy BE1 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

- 3 All plant, machinery, mechanical ventilation equipment and ducting, other than that shown on the approved plans, shall be installed internally. No other plant, machinery, mechanical ventilation equipment, flues or ducting shall be placed on the outside of the building without the prior written permission of the Local Planning Authority.

Reason: In the interest of visual amenity and to comply with policy C28 of the adopted Cherwell Local Plan

- 4 That 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; and that any trees and 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 - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

- 5 That, before any part of the development is first occupied the vehicle access via the Skimmingdish Lane Roundabout and the complete internal roads and footpaths network shall be constructed, surfaced, laid and marked out, drained, lit and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government advice in PPG13: Transport.

6 That before the development is first occupied, the parking and manoeuvring areas shall be provided in accordance with the plan hereby approved and shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety and to comply with Government advice contained in PPG13: Transport.

7 (i) Before the use commences screened provision for the storage of refuse and recycling facilities shall be made in accordance with details as shown on the approved plans. Thereafter the facilities shall be retained solely for their intended purpose and refuse and recycling items shall be placed and stored only in this storage area.

(ii) Before the use commences screened provision for the storage of cycles shall be made in accordance with details as shown on the approved plans. Thereafter the facilities shall be retained solely for their intended purpose and cycles shall be placed and stored only in this storage area.

Reason: To protect the amenities of the area, in the interests of sustainability and to encourage the use of cycles, and to accord with policies T5 of the South East Plan 2009 and ENV1 of the adopted Cherwell Local Plan.

8 The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) comprising:

(i) FRA dated Nov 2009 ref 3284.FRA&DS produced by Stuart Michael Assoc.

(ii) Letter dated 11 Aug from RME Hewitt at Stuart Michael Assoc.

(iii) Letter dated 12 Nov from RME Hewitt at Stuart Michael Associates providing

- micro drainage calculations dated Nov 2010
- drawings: 3284.410 Rev B dated 12 Nov 2010 'Schematic Surface water Drainage Strategy'
- SUDS checklist

(iv) Letter dated 17 Dec from Tim Wood at Stuart Michael Associates providing:

- Drawing 3284.502 Rev A dated 12 Nov 2010 'floodplain compensation (option 2)'
- Floodplain compensation calculations

and the following mitigation measures detailed within the FRA:

1. Limiting the surface water run-off following development to less than greenfield rates as set out in the letter from Stuart Michael Associates dated 11 Aug 2010

2. floodable voids will be utilised under the buildings to ensure that flood flows are not obstructed and Provision of compensatory flood storage on / or in the vicinity of the site to a 1 in 100 year plus climate change standard as set out in the letter from Stuart Michael Associates dated 17 Dec 2010

3. Finished floor levels are set no lower than 70.075 m above Ordnance Datum (AOD) as set out in the letter dated 11 August 2010

Reasons: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site, to prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided and to reduce the risk of flooding to the proposed development and future occupants.

- 9 No development approved by this planning permission shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details.

The scheme shall also include:

- Details of how the scheme shall be maintained and managed after completion
- Greenroofs on all buildings, use of porous paving as shown on drainage plan 3284.410 Rev B
- Limiting the surface water run-off following development to less than greenfield rates as set out in the letter from Stuart Michael Associates dated 11 Aug 2010

Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance.

PLANNING NOTES

Attention is drawn to the conditions imposed on the "outline" permission 05/01563/OUT granted on appeal by letter dated 19th March 2007 which should be read together with this approval. Any outstanding requirement of the conditions to submit details for approval by the Local Planning Authority should be particularly noted.

Highways:

The highway works within the site to be adopted by the Local Highway Authority (LHA) will require a S38 Legal Agreement between the developer & the LHA, off site highway works will be within a S278 Agreement.

If the permission hereby given requires work within the public highway, the applicant is advised that he/she should not commence such work before formal consent is secured from the Highway Authority by way of either (a) a Section 184 Highways Act 1980 notice, or (b) the completion of a formal agreement between the applicant and the Highway Authority. Details of the form of both a) and b) above may be obtained direct from Oxfordshire County Council, the Highway Authority on Tel. (01865) 844300.

Informative on behalf of the Environment Agency:

"Our new modelling shows a large part of this site to be within the functional floodplain, defined by PPS25 as land where water flows or is stored during times of flood. In these areas PPS25 guides developers and Local Planning Authorities (LPAs) to reduce flood risk through the layout and form of development and to relocate existing development elsewhere.

With the above in mind and considering the outline planning permission for this development, our initial minimum requirement for the layout submitted with reserved matters application was for all of the buildings to be located outside the functional floodplain. From the outset we acknowledged that a large proportion of the built footprint would remain within the 1 in 100 year flood extent with an allowance for climate change (the design flood event).

In a meeting dated 15 July 2010, we agreed that flood storage compensation would be provided for losses of open flood storage by lowering available land on the site or near to it. This is to ensure that the buildings do not displace flood waters onto other areas during flood events, worsening flood risk to others.

In addition to flood storage compensation, we agreed that floodable voids would be provided beneath the buildings to minimise the any obstruction of flood flows. We do not find floodable voids alone to be sufficient to mitigate for lost flood storage due to the tendency for voids to become blocked over the lifetime of developments and cease to function as designed."

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise.

The development is considered to be acceptable on its planning merits as the principle of development and other major issues such as access were all resolved at appeal. The revised layout and design have overcome issues of flood risk, subject to imposition of conditions. The design, scale, appearance and landscaping of the development is considered acceptable. Parking is at an appropriate level. The character and appearance of the conservation area will be preserved.

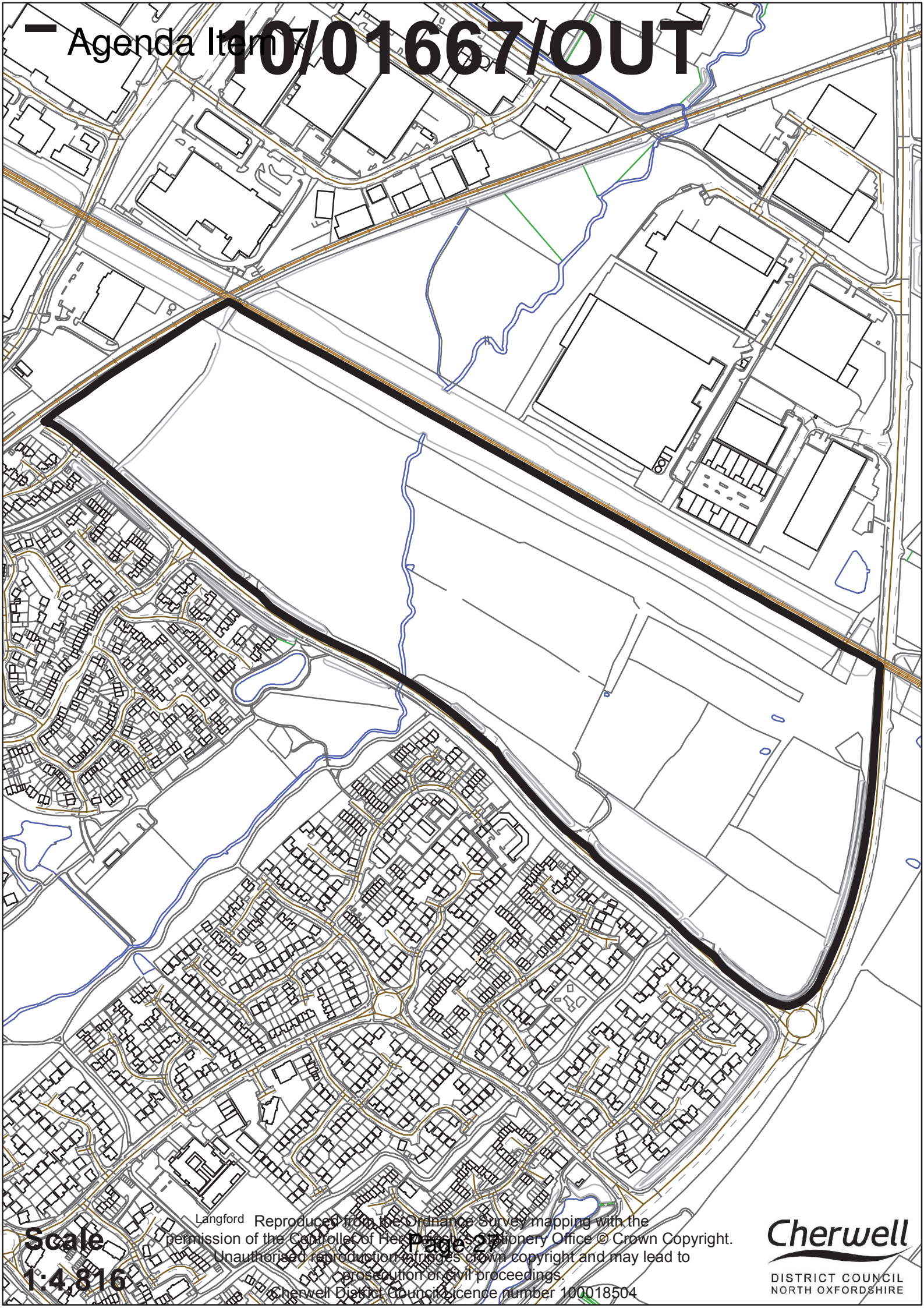
As such the proposal is in accordance with Policies RE3, BE1, CO1, CO2 and CO5 of the South East Plan 2009, EMP1 and C28 of the adopted Cherwell Local Plan and policies D1, D3, D4, TR11, EN1, EN34, EN35, EN36, EN13, EN14 and EN15 the non-statutory Cherwell Local Plan.

For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

CONTACT OFFICER: Andrew Lewis

TELEPHONE NO: 01295 221813

Agenda Item 10/01667/OUT



Scale
1:4,816

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Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

10/01667/OUT



Scale
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Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Application No: **Ward: Bicester South** **Date Valid: 03/11/10**
10/01667/OUT

Applicant: Gallagher Estates Ltd, Mr David Keyes, Gallagher House, Gallagher Business Park, Warwick, CV34 6AF

Site Address: Land Between Birmingham London Rail Line and Gavray Drive, Bicester

Proposal: Extension of time limit to 04/02797/OUT: Residential Development

1. Site Description and Proposal

1.1 Site

This 24.5 hectare undeveloped site is situated to the east of Bicester town centre within the urban area. It is bound by railway lines to the north and west. Langford village residential area lies to the south of the site. Access to the site is directly off the ring road to the east.

1.2 Proposal

This application seeks an extension of time limit for the implementation of the application 04/02797/OUT which was allowed at appeal for residential development in outline only with all matters reserved. The Inspector's decision, dated 12 July 2006, is attached at Appendix A, together with the conditions imposed which included the requirement for the submission of a masterplan, design codes and an ecological construction method statement. There is also a Section 106 agreement related to this decision (not appended). Due to the nature of this application, the detail of the proposal is not repeated in this report. The extant permission (04/02797/OUT) expires on 12 July 2011.

1.3 Relevant Planning History

- 05/01035/F – this was a duplicate application to 04/02797/OUT and submitted whilst that application was under consideration at appeal. The application was refused.
- In November 2007 Planning Committee considered a report on the submissions made by the developer to seek approval for the Master Plan, design codes and the ecological construction method statement (ECMS). Committee approved a wildlife management plan, the design code document and the Master Plan in all respects other than the drainage strategy which had attracted objections from ecologists who had been involved in the appeal. Approval of the ECMS was withheld until the drainage matters were resolved and encouraged an application under Condition 14 relating to drainage matters.
- 09/00584/F – As the Master Plan was not approved, condition 8 was not cleared. The applicant wished to apply for a reserved matters submission to establish the roads and drainage layout and the details of this would allow the clearance of condition 8 but the wording of condition 8 precluded this submission as a reserved matter. Application 09/00584/F sought to amend this dilemma and permission was granted to vary condition 8 (relating to drainage) of the 04/02797/OUT consent allowing the wording to be changed so that the submission of a roads and drainage application could be made prior to the

approval of the masterplan. All other reserved matters applications will still have to await the clearance of the masterplan.

- 09/00909/REM – as yet undetermined application for the roads and drainage infrastructure.

2. Application Publicity

- 2.1 The application has been advertised by site notice, neighbour letter and press notice. The final date for comment was 10 December 2010. No third party representations have been received from neighbouring properties representing private interests but the following comments have been received from various bodies representing ecological interests including BBOWT, Natural England, Butterfly Conservation, Bioscan (UK) Ltd.
- 2.2 Objections have been raised on the following grounds:
- i. Insufficient up to date baseline information with respect to protected species
 - ii. Insufficient information and assessment with respect to the downstream impacts on two SSSIs.
 - iii. Insufficient information regarding the potential hydrological effect of the proposed development on the retained Local Wildlife Site
 - iv. Insufficient consideration of the butterfly interest.
 - v. The assessment does not provide full, secured mitigation and enhancement measures.
 - vi. The proposals do not demonstrate a net gain in biodiversity.
 - vii. The proposals do not accord with current legislation and policy.
 - viii. The Extension of Time application process has been misunderstood.
 - ix. The housing need case no longer exists
 - x. A new Environmental Impact Assessment should be undertaken.

3. Consultations

- 3.1 Whilst all the responses to the consultation exercise are detailed on the core file, available electronically via our website, a summary of the submissions received is provided below. It should be noted that the government advice is that the Council has discretion on whom to consult and should adopt a proportionate approach.
- 3.2 Bicester Town Council: **No objection**. Concerns are expressed that the application is not being progressed within the original timeframe and if it should go on for longer than 24 months the land ought to revert to employment use
- 3.3 Environment Agency: During the course of the application the EA have withdrawn their objection on flood risk grounds. Provided the sequential and exceptions test issues have been addressed the remaining issues can be achieved through conditions.
- 3.4 Thames Water: The existing waste infrastructure is not able to accommodate the needs of the application unless a Grampian style condition is imposed regarding the drainage strategy detailing any on and/or off site works. Matters relating to water supply can be dealt with by informative.
- 3.5 Oxfordshire County Council (Planning Policy): **No objection** provided that the

permission is subject to the existing Section 106 being varied and amended so that the proposed indicative school site is on a part of the site that is not within the 1:50 year flood zone. Also a revised master plan should be submitted that takes into account the relocation of the school site and the latest ecological information. A condition should be imposed so that flood remediation works on the school site is approved prior to the development taking place. The County Council also state that ecological matters should be resolved in accordance with their Annex 1.

- 3.6 Oxfordshire County Council (Highway Authority): **No objection**, subject to Section 106 requirements.
- 3.7 The Council's Planning & Affordable Housing Policy: **No objection**, subject to consideration of material policy changes. This site is included as a deliverable site in the district's housing supply in view of its status as an approved, available and achievable site. It is currently part of the district's 5 year land supply and as a strategic site for some 500 dwellings it is significant. It remains a suitable location for residential development and the LDF work on employment land issues assumes that this site will be developed primarily for housing. The development will need to comply with the requirements relating to sustainability found in Policies NRM11 and CC4 of the SE Plan and the Council's adopted Planning Advice Note on Sustainable Construction Dec 2009.
- 3.8 Launton Parish Council: **No objection**

4. Policy Considerations

National Policy Guidance

- PPS1 (Jan 2005) and Climate Change Supplement published Dec 2006 – Delivering Sustainable Development
- PPS3 (as amended June 2010) - Housing
- PPS4 (Dec 2009) – Planning for Sustainable Economic Growth
- PPS9 (Aug 2005) – Biodiversity and Geological Conservation sets out the Government's objectives for conserving and enhancing biological diversity in England to ensure that planning permissions not only avoid mitigation or compensate for harm but always seeks ways to enhance and restore biodiversity.
- PPG13 – Transport
- PPG24 – Planning & Noise
- PPS25 (March 2010) – Development & Flood Risk – provides advice on assessing flood risk in connection with development and requires the provision of FRAs and sequential tests where development occurs in Flood Zone 3

South East Plan
2009 Policies

- Spatial Strategy - SP3 urban focus and renaissance
- Cross Cutting - CC1, CC2, CC3, CC4, CC6 and CC7 – sustainable development & communities, climate change, resource use, construction and character of the environment
- Housing - H1, H2, H3 and H5 – deliverability, affordability, design and density
- Transport - T1 & T4 – management, investment and parking
- Natural Resource Management - NRM1, NRM2, NRM4, NRM5 & NRM11 – sustainable water resources, ground water quality, flood risk management, conservation & improvement of biodiversity, design for energy efficiency and renewable energy
- Countryside & Landscape Management - C4 and C5 – landscape and countryside management and rural/urban fringe
- Management of the Built Environment - BE1 - management for an urban renaissance

Adopted Cherwell
Local Plan 1996
saved policies

- EMP1 – Employment site
- TR1 – Transport
- R12 – Public open space provision in housing developments
- C1 – Nature conservation
- C2 – Development affecting protected species
- C4 – Promotion and creation of new habitats
- C28 – Design, layout etc standards
- C30 – Housing standards

5. Appraisal

5.1 Extension of Time Limit Applications

An extension to the time limit for implementing planning permission is a relatively new procedure designed to make it easier to keep planning permissions alive for longer during the economic downturn. It grants a new permission for the development authorised by the original permission but differs from an ordinary planning permission in terms of the amount of information required to be submitted by the applicant, the consultee requirements and the fee. It is still considered against the development plan and material considerations under s.38(6) of the 2004 Act.

5.1.1 As the application has been previously approved, this application is to be assessed in terms of whether any material change in circumstances have occurred since the last permission which would lead the Council to form a different opinion thereby altering the decision. Where a s106 agreement relates to the land, the Communities and Local Government (CLG) Guidance recommends that a short supplementary deed be prepared and signed which links the new application to the previous obligation.

5.1.2 With regard to Extension to Time applications, Local Planning Authorities should *'focus their attention on development plan policies and other material considerations which may have changed significantly since the original grant of permission'*

- 5.2 Changes to Development Plan Policy since Approval of Previous Application
With regard to the development plan, the Oxfordshire Structure Plan 2016 is no longer in force. The South East Plan Regional Spatial Strategy May 2009 has been reinstated as part of the development plan and this document is now a material consideration. Insofar as the policies of the SE Plan which replace those of the Structure Plan, there is no significant altering of the position which would materially affect the outcome save those which relate to the greater emphasis on sustainability. Furthermore, some of the adopted Cherwell Local Plan Policies have not been saved.
- 5.3 Government Guidance
PPS1 establishes the overarching objectives of land use planning in facilitating and promoting sustainable development. It also outlines the importance of good urban design as an essential component in improving the quality of the environment. PPS1 illustrates the importance of bringing forward suitable land in appropriate locations. The inspectors report on the previous permission considered the sustainability issue of this site concluding that it was a 'relatively sustainable location, with reasonably good links to the town centre and other facilities...by means other than the private car'. The proposal is also considered to be compliant with PPS1 as it provides good connections between homes and jobs, thereby promoting opportunities for local employment and sport and recreation.
- 5.3.1 There is also now a supplement to PPS1 relating to climate change (published in 2007) which seeks to ensure that development is delivered more efficiently, thereby producing less harmful emissions. Again sustainability is key to this and as the site is considered to be a sustainable location, further improved efficiency levels can be pursued at the detailed stage.
- 5.3.2 PPS3 relates to housing and states that sites should be available, suitable and achievable, all of which apply to this site. The deliverability has, we are advised, only been affected by the difficulties in the housing market which have affected sites across the country. The proposal aims to deliver 500 dwellings which would contribute to the Cherwell's 5 year housing land supply. The LDF work undertaken to date assumes that this site will be given over to housing development and not employment. With sufficient employment land available, the development of this site also complies with PPS4 particular requirements to deliver sustainable economic growth.
- 5.3.3 PPS9 sets out the Governments objectives for conserving and enhancing biological diversity in England to ensure that planning permissions not only avoid mitigation or compensate for harm but always seeks ways to enhance and restore biodiversity. Compliance with this policy is addressed under separate heading (paragraph 5.5) below. Similarly PPS25 relating to flood risk is considered under a separate heading (paragraph 5.6) below.
- 5.3.4 The thrust of government guidance continues to be geared towards ensuring the developments are sustainable. The previous decision was undertaken under regional guidance which had key principles which sought to use urban areas as the main foci for development, to provide sufficient dwellings (especially affordable housing) for those who need to live and work in the region and more sustainable use of transport facilities and natural resources. Access to jobs, services and facilities should be less dependent on longer distance movement. Another key

principle was that there should be continued protection and enhancement of the region's biodiversity.

5.4 New Material Considerations to be Taken into Consideration

Referring to this extension of time limit application, the documents that are being considered are identical to those submitted with the previous application (04/02797/OUT). Having visited the site there appear to be no on site material changes in circumstance and the site contains no built structures. In terms of planning policy and guidance up to date consultation responses have been received in relation to protected species, contaminated land, flood risk and developer contributions. Within the fundamental requirement to consider the development plan policies, the key issues which have emerged are considered to be ecology, flood risk, highways and Section 106 requirements. Consultations on these matters have been carried out under the government guidance which advises that the Council has discretion on whom to consult and should adopt a proportionate approach.

5.5 Ecology/Protected Species

PPS9 places a duty upon Local Planning Authorities to ensure that a protected species survey be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. PPS9 states that "It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."

5.5.1 Local Planning Authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application, as prescribed by Regulation 3(4) of the Conservation (Natural Habitats etc) Regulations 1994 (as amended). Under art.12(1) of the EC Habitats Directive, Member States requires that a system of strict protection of animal species be established to prohibit the deterioration or destruction of their breeding sites or resting places. The result is that there is in practice two linked systems of regulation. First under reg. 39(1)(d) it is a criminal offence to damage or destroy a breeding site or resting place but under reg.44 this does not apply if a licence has been granted for such operations and Natural England being that licensing authority. Secondly where planning permission is required reg.3(4) provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements might be met.

5.5.2 Para. 98 of Circular 06/05 states that Local Planning Authorities should consult Natural England before granting planning permission and the views of Natural England would clearly have to be given substantial weight. The Circular at para 121 affords protection to specific species of animals listed in Schedule 5 (see Table 2, Annex A of this Circular) under Part I of the Wildlife and Countryside Act 1981 (as amended). The Circular at para 123 also advises that Natural England is responsible for issue licences under section 10(1)(d) of the Protection of Badgers Act 1992 where it is necessary to interfere with a badger sett in the course of development.

- 5.5.3 It is clear that ecological matters are a material consideration that requires up-to-date assessment under the Wildlife and Countryside Act. Consideration is needed to be given on the impact of a development upon protected species and their habitats. Great Crested Newts, which are a protected species, have been identified on an adjacent site. Natural England refers to the Ecological Survey Report which identified the newts, which was submitted with the previous application and requires further information from the applicant to satisfy three tests which are required to be met under Regulation 53 of the Habitats Regulations. Further information is also required which sets out how Great Crested Newts fit into the wider management regime of the Informal Open Area. The applicant has provided further information in response to Natural England's comments and those from other ecology groups.
- 5.5.4 It is noted that since the approval of the original outline application work has taken place to prepare a detailed Ecological Construction Method Statement (ECMS) and Wildlife Management Plan (WMP) which has involved all interested ecology groups. This work will inform the Reserve Matters application and the level of information now available is now greater so we are better informed about likely impacts as fewer assumptions are made. Your officers hold the view, therefore, that it is unlikely that any further ecological information will significantly or materially alter the outline proposals. An ECMS is still required by condition on this permission.
- 5.5.5 With regard to impacts on the nearby SSSI's these are some 5.5km and 7.5km away and in normal circumstances this Authority would not seek further comment on this if developments are more than 2km away. Nevertheless, Natural England has objected considering that the SSSI's will be harmed (consistent with their comments on the Reserve Matters application). The issues raised are very detailed matters relating to the use of certain materials which may affect the water quality and changes in water flows. These can be adequately conditioned at Reserve Matters stage and ought not to affect the principle of development at the site. A similar conclusion is drawn in relation to impacts on the Local Wildlife Site and which cannot be wholly concluded without reference to the detailed drainage design proposals and SUDs techniques.
- 5.5.6 Turning to the butterfly interests, both the ECMS and WMP include specific and detailed measures to protect their habitat including section 106 obligations with respect to the Marsh Fritillary Butterfly. It should be noted that the brown and black hairstreaks and small heath butterflies are not legally protected (other than from sale only) under the Wildlife and Countryside Act. The black hairstreak is not listed as an important species in the NERC Act nor is it a UK Biodiversity Action Plan Species. The brown hairstreak and small heath are listed under the NERC Act such that reasonable steps should be taken to conserve them but there is no specific national or local Biodiversity Action Plan for them. Whilst over time their importance or otherwise may change and professionally ecologists may debate this, for the purpose of an extension to time outline application such as this, there has to be a sensible line drawn whereby we can allow for the time for that debate to continue.
- 5.5.7 Of greater interest is the effect on the European Protected Species (EPS) as it is these that require a licence from Natural England and the Council's ecologist has confirmed that this is not likely to be refused. This is backed up by the technical

approval given from Natural England in 2007 regarding the greater crested newts (GCN) which have been taken account of all the way through.

- 5.5.8 This Council has a duty to determine whether any proposed development meets the requirements of the EC Habitats Directive if there is a likelihood that there are EPSs present. There are 3 derogation tests, the first two of which (that of imperative reasons of overriding public need and there being no satisfactory alternative) are often difficult to reconcile with private developments but in this case this is a consented site for housing which will contribute to the Council's housing land supply and provide affordable housing and schooling within a sustainable location and which has been allocated for development in any event. The third test relates to there being no detrimental to the 'favourable conservation status' of the identified species (most notably the GCN). Again there is evolving evidence and there are measures in place to protect the GCNs during the construction phase and to deliver ecological enhancements and habitat creation. These are detailed in the ECMS, subject to condition.
- 5.5.9 Bats and otters are also EPS's and very recently (Easter 2011) further survey work has been undertaken on the latter despite the site conditions not suggesting a likely presence. It has been found that there is no significant evidence of their presence so there would be no contravention to their strict protection. That same survey also revealed no significant evidence of water vole (a UK protected species). As for the bats, again ground conditions would preclude their likely presence and no evidence has ever been found of badger setts within the site.
- 5.5.10 The view is held that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with PPS9 and policies C2 and C4 of the Adopted Cherwell Local Plan.
- 5.6 Flood Risk
PPS25 was introduced in December 2006 to address Development and Flood Risk. As a result there is a need to apply a 'sequential test' approach to the site. Of particular interest is that the development proposed is classed as a 'more vulnerable development' and as such the Exceptions Test must also be completed and be acceptable to the Council. The Environment Agency has withdrawn its objection on grounds of flood risk grounds to this outline planning application subject to conditions which are to be finalised once the EA are confident that the sequential and exceptions test issues have been addressed.
- 5.6.1 Your officers are confident that the report prepared and now awaiting further comment from the EA adequately addresses the final outstanding issues that remain. The sequential test is designed to ensure that sites that are at a lower risk of flooding are developed in preference to higher risk areas and the exceptions test (applied only after the sequential test has been applied) provides a method of managing flood risk while still allowing necessary development to occur.
- 5.6.2 In its current state the site partially lies within Flood Zone 3 though the very recent EA approved Flood Risk Assessment would put the entire site in Flood Zone 1. The Cherwell and West Oxfordshire Level 1 Strategic Flood Risk Assessment was published in April 2009 reviewing all sites including existing commitments

benefitting from planning permission and allocation and sites proposed for development through the LDF noting that this site at Gavray Drive included land within all 3 zones. The highest classification of zoning in the site (a very small area) has been given over to provide open space only so not a vulnerable use. This acknowledges the adopted Local Plan policy EMP1 which identified a central recreational area dividing the site and containing the floodplain of the Langford Brook.

- 5.6.3 Gavray Drive site has been allocated for development in one form or another since 1987 and is still an allocated site in the adopted Cherwell Local Plan (albeit for a less vulnerable use). That part of the site most at risk from flooding is given over to less vulnerable uses and although part of the development site is within the existing floodplain it is a site where floodplain compensation can be undertaken to ensure no loss of floodplain volume takes place.

5.7 Highway Safety

The application has been supported by design information explaining the layout of the site and updated traffic data. It is agreed that this site is a sustainable location and the County Council, as highway authority, note that since the change in the status of Bicester in relation to its Eco status a town wide approach to changing travel and promoting sustainable modes should be encouraged in line with Cherwell's One Shared Vision document. This does not affect the principles of the sites development or the progress of this application to extend the life of the application but more a suggestion as to the transport mitigation that might be sought through the Section 106 contributions.

5.8 Requests for Developer Contributions

Although no specific requests have been made in writing, consideration has been given to up-dating the financial developer contributions, but these cannot be reasonably required given the existing s106 which relates to the land and the CLG guidance referred to above. The existing s106 agreement secures the following: affordable housing and contributions to CDC in the form of indoor and outdoor sport, provision and maintenance of children's play space and amenity and public open space and village hall. Contributions are also payable to the County for education, the Bicester Integrated Transport and Land Use Strategy, library infrastructure, social and health care provision, waste management and museum services. This agreement is still binding on this application and at this time there is no intention to alter the clauses of the s106 agreement which will link to any new permission by simple supplementary deed.

5. Conclusion

Given the above assessment, it is concluded that there have not been any material changes in circumstances that would alter the outcome for permission being granted at this site for the development proposed since the last permission was issued. However given the requirements set out in Regulation 53 of the Habitats Regulations, further assessment of the impact of the proposal upon Great Crested Newts and bats may be required closer to the time of when the development is actually due to start. This action is also recommended with regard to badgers. The documents submitted with this application are identical to the scheme which was approved in outline. The proposed scheme remains to be in accordance with Government Guidance and the Council's Development Plan in principle as it meets sustainable objectives and would be developed at an appropriate density within an

existing residential area. The proposal would not result in a risk to highway safety or flooding and would result in securing developer contributions towards to Local Infrastructure.

6. Recommendation

Approval, subject to: Recommended conditions from the Environment Agency (which are yet to be finalised) and the following conditions:

1. No development shall be started on any phase until full details of the siting, scale, design, layout and external appearance of all buildings, landscaping and all means of access within that phase, the provision of infrastructure and the laying out of open space, (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority. The reserved matters submissions shall be in accordance with the Approved Master Plan and Design Codes, unless otherwise approved in writing by the Local Planning Authority. (RC1)
2. In the case of the reserved matters, application for the first reserved matters approval shall be made not later than the expiration of three years from the date of this permission and the last no later than five years from the date of this permission. (RC1)
3. The development to which this permission relates shall be begun not later than whichever is the later of the following dates:
 - (a) the expiration of five years from the date of the grant of outline permission
 - (b) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. No building on the site shall exceed 3 storeys in height.(RC7A)
5. The residential development shall be at a range of densities as set out in the Design Codes but at not less than 30 dwellings per hectare in any phase and to achieve an average density of not less than 35 dwellings per hectare across the site. (RC4A)
6. No more than 500 dwellings shall be built on the site. (RC8A)
7. A strategy for public consultation in respect of the development shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. This shall include details of the consultation process to be carried out whilst construction works are proposed, carried out and completed on the site including consultation on Design Codes, Master Plans, Ecological Construction Method Statement and reserved matter applications. The approved consultation strategy shall thereafter be implemented and complied with at all times unless any alteration or variation has first been agreed in writing with the Local Planning Authority. (RC4A)
8. That with the exception of an application for the approval of the detailed design and strategy of the surface water drainage and for the layout of the internal road network no other reserved matters applications shall be made or development commenced until the submitted Master Plan has been approved in writing by the Local Planning Authority. The Master Plan shall include:
 - (a) an overall layout plan showing the distribution of all principle land uses throughout the site, including residential, primary school, areas of open

- space, the retained County Wildlife Site, and the means of access thereto, including the general alignment of the access roads and principal pedestrian and cycle routes,
- (b) the character areas to be covered by Design Codes,
- (c) details of the landscape structure, mitigation planting and hedge/tree protection corridors, including a scheme for hedgerow retention/removal if proposed and agreed,
- (d) the phases and parcels of the development to which the Affordable Housing Parcel Scheme relate,
- (e) details of the foul, surface and land drainage from the site and the development including surface water control measures and balancing, sewers and connections,
- (f) the location of the neighbourhood equipped area of play (NEAP) and the boundaries and principal features of the flood plain area.

Reason - To prevent the increased risk of flooding and to improve water quality, and in order to comply with Government advice in PPS25: Development and Flood Risk and Policy NRM4 of the South East Plan 2009.

9. No reserved matters applications shall be made or development commenced until Design Codes for the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the Approved Design Codes. The Design Codes shall include:
- (a) the character, mix of uses and density of each phase or parcel identified on the Master Plan to include the layout of blocks and the structure of public spaces,
 - (b) the character and treatment of the perimeter planting to the development areas,
 - (c) the building height, scale, form, design features and means of enclosure that will form the basis of the character of each phase or parcel,
 - (d) the street form, hierarchy and features that will be used to restrict traffic speeds and create legibility and requirements for street furniture,
 - (e) the approach to car/cycle parking within the phases and parcels and the level of car/cycle parking to be provided to serve the proposed uses,
 - (f) the materials to be used within each character area,
 - (g) the treatment of the hedge corridors and retained trees and local areas of play within each phase or parcel,
 - (h) measures to ensure energy efficiency and compliance with BRE Eco Homes good/very good ratings,
 - (i) measures to ensure the retention of the footpaths through the built development and their enhancement for walkers.

Reason – To ensure the satisfactory appearance of the completed development, to ensure energy and resource efficiency practices are incorporated into the development and to comply with Government advice contained in PPS: Planning and 'Climate Change' Supplement to PPS1), Policies BE1, CC2 and CC4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

10. The Master Plan and Design Codes shall be submitted to the Local Planning Authority within 12 months of the date of this permission. (RC4A)
11. The Ecological Construction Method Statement (ECMS) shall be approved in writing by

the Local Planning Authority prior to any work commencing on the site pursuant to this permission. All work on site shall thereafter be in accordance with the approved ECMS, unless any alteration or variation has first been agreed in writing by the Local Planning Authority. (RC85A)

12. An implementation plan shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing. This shall include the timing of the provision of mitigation planting, major infrastructure, access roads, laying out of the open spaces and the development of any proposed phases or parcels.

Reason – To ensure that any infrastructural and other requirements of the development are appropriately mitigated in order to comply with Government guidance in PPS3: Housing, Policies H3, C4 and CC7 of the South East Plan 2009 and Policies C28 and R12 of the adopted Cherwell Local Plan.

13. No development shall take place within the site until the applicant has secured the implementation of a stage programme of archaeological investigation measures in accordance with a written scheme which shall be submitted to and approved in writing by the Local Planning Authority. The programme of work shall include all processing, research and analysis necessary to produce an accessible and usable archive and full report for publication. The work shall be carried out by a professional archaeological organisation acceptable to the Local Planning Authority.

Reason – To secure the provision of archaeological investigation and the subsequent recording of the remains, to comply with Government advice in PPS5: Planning for the Historic Environment and Policy BE6 of the South East Plan 2009.

14. No development shall commence until a scheme for the disposal of surface water, including phased works and the maintenance thereof, attenuation, storage and on-site balancing arrangements, reflecting current best practice for sustainable urban drainage, has been submitted to and approved in writing by the Local Planning Authority. No development shall take place other than in accordance with the approved scheme. (RC67AA)

15. Prior to the commencement of the development details of any flood storage works shall be submitted to and approved in writing by the Local Planning Authority and thereafter development shall take place in accordance with those approved details. (RC88A)

16. No development shall commence until a scheme for dealing with foul drainage from the site, including any phased works, has been submitted to and approved in writing by the Local Planning Authority. The foul drainage shall thereafter be carried out in accordance with the approved scheme. (RC23AA)

17. Details of the siting and design of the Local Areas of Play (LAPs) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development in any phase or parcel and thereafter provided in accordance with the approved details, prior to the occupation of any dwelling situated within 30 metres of the perimeter of the LAP. (RC92A)

18. Prior to the construction of any dwelling in any phase of the development a noise assessment, including any necessary mitigation measures, shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any

dwelling any necessary mitigation measures shall be completed in accordance with the approved assessment. (RC53AB)

19. Hedges and trees identified for retention shall be protected by a buffer zone on either side measured at least one metre beyond the existing canopy spread of the hedgerow and trees prior to any agreed pruning or reduction works. The buffer zone shall be fenced prior to any work on the phase or parcel taking place, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved fencing shall thereafter be retained during all construction activity. (RC73A)
20. That within 3 to 6 months before works commence on site a survey to check for badger activity shall be undertaken and a report of the findings and recommendations shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved recommendations. (RC85A)
21. That within 3 to 6 months before works commence on site a survey to check for bat activity shall be undertaken and a report of the findings and recommendations shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved recommendations. (RC85A)
22. A scheme for the provision of fire hydrants shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction of each phase and shall thereafter be implemented in accordance with the agreed details. (RC87A)
23. Details of the location of all site compounds, access thereto and construction site parking, as well as a scheme for their subsequent removal and restoration of the land, shall be submitted to and approved in writing by the Local Planning Authority prior to their establishment. The compounds, accesses and parking shall be located and subsequently removed in accordance with the approved details. (RC91)
24. That prior to the first occupation of the development a scheme for the provision of street nameplates, including their location and full design details, shall be submitted to and approved in writing by the Local Planning Authority.

Reason - In the interests of amenity, to ensure the creation of a pleasant environment, in the interests of highway safety and to comply with Government advice contained in PPG13:Transport and Policy C28 of the adopted Cherwell Local Plan.

25. That prior to the first occupation of the development the street nameplate details approved under condition 24 shall be installed, retained and maintained in accordance with those details.

Reason - In the interests of amenity, to ensure the creation of a pleasant environment, in the interests of highway safety and to comply with Government advice contained in PPG13:Transport and Policy C28 of the adopted Cherwell Local Plan.

Planning Notes:

- a) Q1 – Legal agreement

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

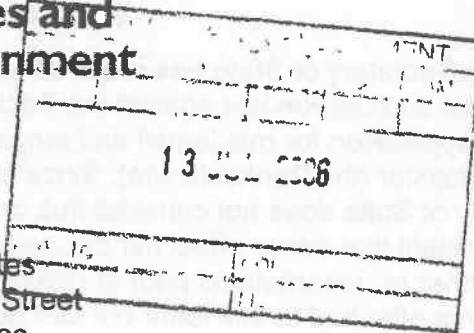
The Council, as local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal is acceptable in principle and pays proper regard to the character and appearance of the site and surrounding area and has no undue adverse impact upon the residential amenities of neighbouring properties, protected species or highway safety. The proposal represents a sustainable development and will not increase flood risk. As such the proposal is in accordance with Government Guidance contained within PPS1, PPS3, PPS4 , PPS9, PPG13 and PPS25, Policies SP3, CC1, CC2, CC3, CC4, CC6, H1, H2, H3, H5, T1, T4, NRM1, NRM2, NRM4, NRM5, NRM11, C4, C5, BE1, CO1 and CO3 of the South East Plan 2009 and Policies EMP1, TR1, C1, C2, C4, C28 and C30 of the adopted Cherwell Local Plan. For the reasons given above and having proper regard to all other matters raised the Council considered that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

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Our Ref APP/C3105/A/05/1179638

12 July 2006

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY GALLAGHER ESTATES LIMITED
LAND NORTH OF GAVRAY DRIVE, BICESTER, OXFORDSHIRE
APPLICATION REF: 04/02797/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Nigel Payne, BSc (Hons) DipTP MRTPI MCMI, who held a public inquiry between 14 March 2006 and 24 March 2006 into your client's appeal against Cherwell District Council's failure to determine an application for outline planning permission. The development proposed is residential development (including affordable housing) incorporating a county wildlife site together with land reserved for a primary school, community facilities, public open space, rail chord and structure planting, in accordance with application number 04/02797/OUT, dated 24 December 2004.
2. On 7 June 2005, the Secretary of State recovered the appeal for her own determination, in pursuance of section 78 of the Town and Country Planning Act 1990.

Inspector's Recommendation and Summary of the Decision

3. The Inspector recommended that outline planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation to grant outline planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. In reaching her decision, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the application.

5. Since the close of the Inquiry, the Secretary of State has received correspondence relating to a Pre-Action Protocol for Judicial Review against the Secretary of State's decision not to call in a planning application for residential and employment development on another site in Bicester (the Bankside site). Since she is proposing to allow this appeal, the Secretary of State does not consider this challenge to raise any new issues relevant to this appeal that either affect her decision or require her to refer back to the parties for further representations prior to reaching a decision. The relevant correspondence is not attached to this letter but can be made available upon request to this office.

Policy Considerations

6. In deciding the application, the Secretary of State has had regard to section 38 (6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case, the development plan comprises the Regional Spatial Strategy (RSS) for the area in the form of Regional Planning Guidance Note 9 (RPG9), approved in March 2001; the Oxfordshire Structure Plan (OSP) 2016, adopted in October 2005, the Cherwell Local Plan, adopted in November 1996. The Non-Statutory Cherwell Local Plan (NSCLP) was adopted as interim policy for development control purposes by the Council in December 2004. For the reasons given in IR85, the Secretary of State agrees with the Inspector that the weight that can reasonably be attached to its proposals and policies is materially reduced. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR10-21
8. The Secretary of State notes that the RSS for the South East is currently under review. However, as this is at an early stage in its preparation, she affords it limited weight
9. Other material considerations that the Secretary of State has taken into account include Planning Policy Guidance note 3 (PPG3): *Housing*; Planning Policy Statement 6 (PPS6) *Planning for Town Centres*; Planning Policy Statement 9 (PPS9): *Biodiversity and Geological Conservation*, Planning Policy Guidance 13 (PPG13) *Transport*, Circular 11/95: *The Use of Conditions in Planning Permission*, and Circular 05/2005: *Planning Obligations*.
10. The Secretary of State has taken into account the Consultation Paper on Planning Policy Statement 3 (PPS3) *Housing*, published on 8 December 2005 but, as the draft document may be subject to change, she affords it very little weight.

Main Issues

11. The Secretary of State agrees with the Inspector that the main considerations in determining the current application are those listed in IR83. Before turning to those matters, she has also considered the relationship of the proposals to the development plan

The relationship of the proposal to the development plan

12. The Secretary of State concludes that the site is allocated for employment use in the Cherwell Local Plan adopted in 1996 and in the Non-Statutory Cherwell Local Plan, and that this proposal would therefore conflict with those development plan policies. The Secretary of State notes that an early version of the Non-Statutory Cherwell Local Plan did allocate the site for housing and she agrees with the Inspector that it was not a matter of dispute at the inquiry that the site is suitable in principle for residential development (IR84-85).
13. The Secretary of State also concludes that the proposals do not conflict with those development plan policies identified in IR10-17, IR19 and IR21, relating to housing, biodiversity and ecology, economic development, and concentrating new development on the larger urban areas. However, given the specific allocation of this site for employment uses, the Secretary of State concludes that the proposals are not in accordance with the development plan taken as a whole. She has therefore gone on to consider whether there are any material considerations that indicate she should determine the appeal other than in accordance with the development plan.

Whether the site should be retained for future employment uses or used now for new housing

Housing

14. For the reasons given in IR84, the Secretary of State agrees with the Inspector that it is now appropriate to reconsider this site's allocation for employment, in line with national PPG3 guidance. The Secretary of State also agrees with the Inspector that the fact that the Cherwell Local Plan is now essentially out of date strongly reinforces this conclusion (IR85).
15. With regard to the housing supply situation, the Secretary of State agrees with the Inspector that the delivery of housing units in Bicester and the district as a whole has been materially below strategic requirements and there is a pressing local need for affordable housing (IR86). For the reasons given in IR86-88, the Secretary of State shares the concerns of the Inspector regarding the dependence on one large site to provide most of Bicester's new housing needs over the period to 2016.
16. The Secretary of State agrees with the Inspector that any delay in development on the South West Bicester site would exacerbate an already unsatisfactory situation in terms of underperformance against OSP requirements in 2007/8, 2008/9 and 2009/10, whereas this site could provide 500 new houses in the early years to 2016, and thereby make an important contribution to "filling the gap" (IR89).

Employment

17. The Secretary of State agrees with the Inspector that there is a more than adequate supply of employment land and premises in the area to meet Bicester's contribution to Cherwell District Council's Draft Economic Development Strategy of 6,000 new jobs across the district as a whole by 2011 (IR90). For the reasons given in IR90, she also agrees that that strategy should take precedence over the NSCLP. The Secretary of State also agrees with the Inspector that it has not been demonstrated

that there is a realistic prospect of the site being utilised for new employment provision in the foreseeable future (IR92) She has particularly borne in mind the fact that the site has now remained undeveloped for approaching 20 years, since it was first identified as suitable for employment development. For these reasons and the reasons given in IR90-95, the Secretary of State agrees with the Inspector that the local strategy for economic development would not be undermined by the early use of this site to help provide the houses needed in the town to meet the requirements of the Oxfordshire Structure Plan, and concludes that the site should be used now for new housing, to help meet strategic requirements and local needs, including for affordable housing, rather than being retained for possible future employment development.

Whether residential development would give rise to an unacceptable increase in the need to travel, particularly by private car

18. The Secretary of State agrees with the Inspector, for the reasons given in IR97-101, that residential development on this site would not give rise to an unacceptable increase in the need to travel, including by private car, particularly when compared to the alternative of mainly B1 employment use

Whether the scheme would result in significant harm to the ecological interest of the site and, if so, whether that harm is outweighed by an overriding need for the development

19. The Secretary of State notes the criticisms made regarding the Environmental Impact Assessment process and specific aspects of the proposals (IR103) and agrees with the Inspector that it is inevitable that the fragmentation of the County Wildlife Site would increase to a degree (IR104). However, the Secretary of State agrees with the Inspector that the suggestion that employment development would have less impact than housing on the environmental value of the eastern part of the site is unsupported by evidence, other than the potential effect of access by new residents over the retained County Wildlife Site (IR105).
- 20 For the reasons given in IR106-109, the Secretary of State agrees with the Inspector that no significant environmental effect was omitted from the Environmental Impact Assessment process and that the chance discovery of a marsh fritillary butterfly on the site could not reasonably have been anticipated. She further agrees with the Inspector that the baseline data provided has been adequate to assess the likely significant environmental effects of the proposals.
- 21 The Secretary of State agrees with the Inspector that, for the reasons given in IR110-116, taking into account all the planning conditions and provisions of the S106 agreement, the scheme would not result in significant harm to the ecological interest of the site. Such harm that would arise is clearly outweighed by the need for new housing to meet local requirements in this sustainable location (IR111-116).

Other matters

- 22 For the reasons given in IR117-119, the Secretary of State agrees with the Inspector, that there is no archaeological objection in principle to the development of the site, and that the surface water drainage proposals for the site are suitable and acceptable.

Conditions and Obligations

- 23 The Secretary of State has considered the proposed conditions and national policy as set out in circular 11/95. She concludes that the conditions are necessary, relevant to planning and the development permitted, and are enforceable, precise and reasonable in all other respects. She also concludes that the planning obligation submitted to the inquiry is necessary and relevant to the proposed development and meets the policy tests of Circular 05/05.

Overall Conclusion

- 24 The Secretary of State concludes that the appeal site's allocation for employment development means that the appeal proposal is not in accordance with the development plan. However, she also concludes that the proposal will contribute to the supply of housing, and particularly affordable housing, in the early years to 2016. She also concludes that releasing this site for housing will not undermine the local strategy for economic development, that the site is a sustainable one, and that the scheme would not result in significant harm to the ecological interest of the site. Overall the Secretary of State concludes that those material considerations which favour allowing the appeal are of sufficient weight to determine the appeal other than in accordance with the development plan.

Formal Decision

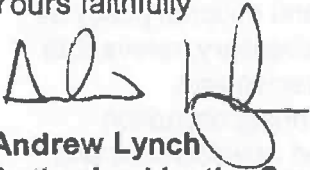
- 25 Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your client's appeal and grants outline planning permission for residential development on land north of Gavray Drive, Bicester, Oxfordshire in accordance with application number 04/02797/OUT dated 24 December 2004, subject to the conditions appended to Annex A of this letter.
- 26 An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
27. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
- 28 This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

- 29 A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.

30. A copy of this letter has been sent to Cherwell District Council and interested third parties

Yours faithfully



Andrew Lynch
Authorised by the Secretary of State
to sign in that behalf

Annex A

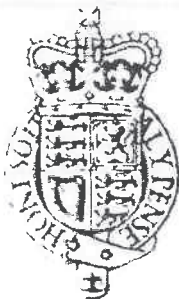
Conditions

- 1 No development shall be started on any phase until full details of the siting, scale, design, layout and external appearance of all buildings, landscaping and all means of access within that phase, the provision of infrastructure and the laying out of open space, (hereafter referred to as reserved matters) have been submitted to and approved in writing by the local planning authority. The reserved matters submissions shall be in accordance with the Approved Master Plan and Design Codes, unless otherwise approved in writing by the local planning authority
- 2 In the case of the reserved matters, application for the first reserved matters approval shall be made not later than the expiration of three years from the date of this permission and the last no later than five years from the date of this permission.
- 3 The development to which this permission relates shall be begun not later than whichever is the later of the following dates:
 - the expiration of five years from the date of the grant of outline permission,
 - the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 4 No building on the site shall exceed 3 storeys in height.
- 5 The residential development shall be at a range of densities as set out in the Design Codes but at not less than 30 dwellings per hectare in any phase and to achieve an average density of not less than 35 dwellings per hectare across the site.
- 6 No more than 500 dwellings shall be built on the site.
7. A strategy for public consultation in respect of the development shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. This shall include details of the consultation process to be carried out whilst construction works are proposed, carried out and completed on the site including consultation on Design Codes, Master Plans, Ecological Construction Method Statement and reserved matter applications. The approved consultation strategy shall thereafter be implemented and complied with at all times unless any alteration or variation has first been agreed in writing with the local planning authority.
8. No reserved matters applications shall be made or development commenced until a Master Plan has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the Approved Master Plan. Any revisions to the Approved Master Plan shall also be made by submission in writing and shall not be implemented unless or until approved in writing by the local planning authority. The Master Plan shall include:
 - (a) an overall layout plan showing the distribution of all principal land uses throughout the site, including residential, primary school, areas of open space, the retained County Wildlife Site and the means of access thereto, including the general alignment of the access roads and principal pedestrian and cycle routes;

- (b) the character areas to be covered by Design Codes,
 - (c) details of the landscape structure, mitigation planting and hedge/tree protection corridors, including a scheme for hedgerow retention/removal and the timing of removal if proposed and agreed,
 - (d) the phases and parcels of the development to which the Affordable Housing Parcel Scheme relate,
 - (e) details of the foul, surface and land drainage from the site and the development including surface water control measures and balancing, sewers and connections;
 - (f) the location of the neighbourhood equipped area of play (NEAP) and the boundaries and principal features of the flood plain area
9. No reserved matters applications shall be made or development commenced until Design Codes for the site have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the Approved Design Codes. The Design Codes shall include:
- (a) the character, mix of uses and density of each phase or parcel identified on the Master Plan to include the layout of blocks and the structure of public spaces;
 - (b) the character and treatment of the perimeter planting to the development areas;
 - (c) the building height, scale, form, design features and means of enclosure that will form the basis of the character of each phase or parcel;
 - (d) the street form, hierarchy and features that will be used to restrict traffic speeds and create legibility and requirements for street furniture;
 - (e) the approach to car/cycle parking within the phases and parcels and the level of car/cycle parking to be provided to serve the proposed uses;
 - (f) the materials to be used within each character area;
 - (g) the treatment of the hedge corridors and retained trees and local areas of play within each phase or parcel,
 - (h) measures to ensure energy efficiency and compliance with BRE Eco Homes good/very good ratings;
 - (i) measures to ensure the retention of the footpaths through the built development and their enhancement for walkers
10. The Master Plan and Design Codes shall be submitted to the local planning authority within 12 months of the date of this permission.
11. An Ecological Construction Method Statement (ECMS) shall be submitted to and approved in writing by the local planning authority prior to any work commencing on the site pursuant to this permission. All work on site shall thereafter be in accordance with the approved ECMS, unless any alteration or variation has first been agreed in writing by the local planning authority.

- 12 An implementation plan shall be submitted to and approved in writing by the local planning authority prior to development commencing. This shall include the timing of the provision of mitigation planting, major infrastructure, access roads, laying out of the open spaces and the development of any proposed phases or parcels.
- 13 No development shall take place within the site until the applicant has secured the implementation of a staged programme of archaeological investigation measures in accordance with a written scheme which shall be submitted to and approved in writing by the local planning authority. The programme of work shall include all processing, research and analysis necessary to produce an accessible and usable archive and full report for publication. The work shall be carried out by a professional archaeological organisation acceptable to the local planning authority.
- 14 No development shall commence until a scheme for the disposal of surface water, including phased works and the maintenance thereof, attenuation, storage and on-site balancing arrangements, reflecting current best practice for sustainable urban drainage, has been submitted to and approved in writing by the local planning authority. No development shall take place other than in accordance with the approved scheme.
- 15 Prior to the commencement of development, details of any flood storage works shall be submitted to and approved in writing by the local planning authority, and thereafter, development shall take place in accordance with those approved details.
- 16 No development shall commence until a scheme for dealing with foul drainage from the site, including any phased works, has been submitted to and approved in writing by the local planning authority. The foul drainage shall thereafter be carried out in accordance with the approved scheme.
- 17 Details of the siting and design of Local Areas of Play (LAPs) shall be submitted to and approved in writing by the local planning authority prior to the commencement of development in any phase or parcel and thereafter provided in accordance with the approved details, prior to the occupation of any dwelling situated within 30 metres of the perimeter of the LAP.
- 18 Prior to the construction of any dwelling in any phase of the development a noise assessment, including any necessary mitigation measures, shall be submitted to and approved in writing by the local planning authority. Prior to the occupation of any dwelling any necessary mitigation measures shall be completed in accordance with the approved assessment.
- 19 Hedges and trees identified for retention shall be protected by a buffer zone on either side measured at least one metre beyond the existing canopy spread of the hedgerow and trees prior to any agreed pruning or reduction works. The buffer zone shall be fenced prior to any work on the phase or parcel taking place, in accordance with details that have first been submitted to and approved in writing by the local planning authority. The approved fencing shall thereafter be retained during all construction activity.
- 20 A scheme for the provision of fire hydrants shall be submitted to and approved in writing by the local planning authority prior to the commencement of construction of each phase and shall thereafter be implemented in accordance with the agreed details.

21. Details of the location of all site compounds, access thereto and construction site parking, as well as a scheme for their subsequent removal and restoration of the land, shall be submitted to and approved in writing by the local planning authority prior to their establishment. The compounds, accesses and parking shall be located and subsequently removed in accordance with the approved details.



Report to the First Secretary of State

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ GTN 1371 8000

by **Nigel Payne** BSc (Hons) DipTP MRTPI MCMi

an Inspector appointed by the First Secretary of State

Date 4 May 2006

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY GALLAGHER ESTATES LIMITED

against

CHERWELL DISTRICT COUNCIL

Inquiry held on 14 - 24 March 2006

Land North of Gavray Drive, Bicester, Oxfordshire OX26 6EO

File Ref(s) APP/C3105/A/05/1179638

File Ref: APP/C3105/A/05/1179638

Land North of Gavray Drive, Bicester, Oxfordshire OX26 6EO.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
- The appeal is made by Gallagher Estates Limited against Cherwell District Council
- The application ref 04/02797/OUT is dated 24 December 2004
- The development proposed is residential development (including affordable housing) incorporating a county wildlife site together with land reserved for a primary school, community facilities, public open space, rail chord and structure planting

Summary of Recommendation: The appeal be allowed and outline planning permission granted subject to conditions.

Procedural Matters

- 1 On 7 June 2005 the First Secretary of State issued a direction using his powers under Section 79 and Paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 that he should determine the appeal as it raises issues relating to residential development of 5 or more hectares or 150 or more dwellings This followed the lodging of an appeal against non-determination of an outline planning application on 6 May 2005
- 2 Cherwell District Council (CDC) resolved on 23 June 2005 that, had they been able to do so, they would have refused the application for seven reasons
 - 1) *The proposed residential and ancillary development of this site is contrary to the allocation of this site for employment generating development in the adopted Cherwell Local Plan and the non-statutory Cherwell Local Plan 2011 which has been adopted as interim policy for development control purposes The Council does not accept that the applicant's arguments concerning alleged lack of employment land demand and the need to increase housing supply in areas of under delivery are sufficient to outweigh this policy objection*
 - 2) *The development would be likely to give rise to an increase in the need to travel, particularly by private car, contrary to the principles of sustainability guiding the location of new development in the Oxfordshire Structure Plan 2011 Policy G1*
 - 3) *In the absence of a Section 106 legal obligation the Local Planning Authority consider that the proposal is contrary to Policy G3 of the Oxfordshire Structure Plan 2011 in that the required contributions to on-site and off-site infrastructure is not guaranteed or secured*
 - 4) *In the absence of evidence to the contrary the Local Planning Authority (and the Environment Agency) are not convinced that the parts of the site proposed for development are not within the floodplain of the Langford Brook Development of such areas is contrary to Policy ENV8 of the adopted Cherwell Local Plan and Policy E7 of the non-statutory Cherwell Local Plan 2011 and the advice contained in PPG 25 "Development and Flood Risk"*
 - 5) *In the absence of evidence to the contrary the Local Planning Authority consider that the development of the site may adversely affect an area of archaeological interest and is therefore contrary to Policy C26 of the adopted Cherwell Local Plan and Policy ENV7 of*

the non-statutory Cherwell Local Plan 2011 and the advice contained in PPG 16 "Archaeology and Planning"

6) The proposal affects the possible habitat of the marsh fritillary butterfly (a species included in Annex II of the European Habitats Directive) and protected by the Wildlife and Countryside Act 1981 (as amended) Until such time as further investigation of this issue and the possible need to amend the proposal has been undertaken the Council consider that the proposal is contrary to Policy C2 of the adopted Cherwell Local Plan and Policy EN24 of the non-statutory Cherwell Local Plan 2011 and the advice contained in paras 44-48 of PPG 9 "Nature Conservation"

7) In the absence of evidence to the contrary the Local Planning Authority (and Thames Water) consider that the development may have an adverse effect upon the sewerage system and water supply to nearby communities due to the possible inability of the existing systems to cope with the increased demand placed upon by this development As a consequence, the development would be contrary to Policy EN9 and EN12 of the non-statutory Cherwell Local Plan

- 3 On 11 August 2005 the First Secretary of State, having considered the content of the Environmental Statement (ES) accompanying the planning application and having regard to Regulation 2(1) and Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, required the appellant to supply "further information" on the following A) the effect on the rare marsh fritillary butterfly, in view of the observed presence on the site and the potential value of the site as habitat; B) flood risk in view of objections from the Environment Agency and C) archaeology in view of the anticipated presence of Romano-British and Iron Age settlements in the area
- 4 It was confirmed at the opening of the inquiry that the application was in outline with all matters of detail reserved for subsequent determination and that plans C – F inclusive were for illustrative and/or information purposes only I have made my recommendation on this basis I undertook an accompanied site visit on the afternoon of 16 March and inspected the site, surroundings, and various locations mentioned during the inquiry in and around Bicester again, unaccompanied, on 24 March
- 5 A Statement of Common Ground (SCG) was agreed between the Appellants, Cherwell District Council and Oxfordshire County Council before the inquiry opened (Doc 3) During the giving of evidence a few minor corrections were made to the proofs and appendices and I have made the necessary alterations
- 6 A Section 106 legal agreement (Doc 5) was submitted before the end of the inquiry with signed copies made available two weeks later All the obligations and undertakings contained therein are consistent with those made known and discussed at the inquiry and I have therefore taken it into account as a material consideration
- 7 This report includes a description of the site and surroundings, the policy framework, the planning history, the proposals, agreed facts, a summary of the representations made at the inquiry and my conclusions and recommendation A list of appearances, documents (including proofs of evidence and appendices) and plans is also attached, together with a schedule of Core Documents (CDs) (Doc 6) Site and Surroundings
- 8 This essentially flat site, of approximately 24.5 ha and containing no built structures, lies on the south eastern side of Bicester, roughly 1.3 km from the town centre and to the north of Langford Village, a large modern residential area. It is bounded by the elevated

Birmingham to Marylebone rail lines to the north, with Bicester Park, a large distribution centre, beyond. The town's Eastern by-pass is to the east, Gavray Drive to the south and the Oxford to Bicester railway line at ground level to the west. Although nominally agricultural land of Grade 3b quality, the site appears to be largely unfarmed at present, with limited use for casual recreation by local residents.

- 9 It is split into two distinct parts by the Langford Brook, with a largely open field to the west comprising about one third of the total site. To the east, the land is divided into a number of smaller parcels by extensive hedges and lines of trees, some of which are the subject of Tree Preservation Orders (TPO), indicative of an older surviving field pattern and more traditional methods of farming. This area currently provides a wide variety of habitats for flora and fauna with running and standing water areas, patches of damp grass, scrub, hedgerows and grassland. This is reflected in the local designation of the central part of the site, east of the Langford Brook, as a County Wildlife Site (CWS). Two public footpaths cross the site. One runs north-south close to the western boundary from Tubbs Lane through to Bicester Park passing under the railway, whilst the other runs east-west from Gavray Drive, just east of the brook, to the site's eastern boundary.

Planning Policy

- 10 At present, the relevant regional planning guidance is contained in RPG 9, approved in March 2001, as amended. The key principles (para 3.5) include the use of urban areas as the main foci for development, the provision of sufficient dwellings (especially affordable housing) for all those who need to live and work in the region and more sustainable use of transport facilities and natural resources. In particular, access to jobs, services and facilities should be less dependant on longer distance movement, with increased ability to meet normal travel needs through safe walking, cycling and public transport.
- 11 Another key principle is that there should be continued protection and enhancement of the region's biodiversity, particularly internationally and nationally important nature conservation areas. Policy E2 seeks positive action to achieve the targets set out in Biodiversity Action Plans (BAP) through planning decisions and other measures. Development plans should give priority to specific species and habitats of international, national and sub-regional importance identified therein by conserving and enhancing existing wildlife habitats, encouraging the management of land for nature conservation as part of development proposals and identifying locations for habitat management, restoration and creation.
- 12 In the Western policy area, which includes Oxfordshire, para 4.22 encourages economic development strategies to build on existing strengths, such as the high skills and knowledge base, to ensure sustainable growth. Regarding development plans, policy RE3 says that local economic development strategies should be fully taken into account, reflecting capacity in terms of labour, land and transport, local strengths and changing work/living patterns. Policy RE4 adds that businesses should be located in areas well served by sustainable modes of transport, with forms of development that maximise environmental and social benefits, such as mixed uses, encouraged.
- 13 The Council says (Evans para 9.2) that the emerging regional spatial strategy for the South East will identify Bicester as capable of helping to realise the potential of the sub region to support high value employment, partly due to its proximity to Oxford. The appellants point out (Keene para 3.24) that the County Council is envisaging a further phase of significant new housing growth in Bicester, of either 2,000 or 4,000 more houses up to 2026, as a result

- of the emerging regional spatial strategy. However, this is at an early stage in its preparation and can therefore only be accorded limited weight.
- 14 At the time of the Council's consideration of this application, the Oxfordshire Structure Plan (OSP) 2011 was extant. However, this has since been superseded by the OSP 2016, adopted in October 2005, albeit containing similar strategic policies. In particular, policy G1 follows the key principles of RPG 9 in seeking to concentrate new development on the larger urban areas, such as Bicester, in locations where a reasonable range of services and facilities exist or can be provided and the need to travel, particularly by car, reduced with walking, cycling and the use of public transport encouraged. Policy G2 aims to improve the quality and design of schemes, whilst G3 refers to the provision of the necessary infrastructure to accompany new development and G6 seeks the incorporation of best practice in energy efficiency and resource conservation.
 - 15 In relation to housing, policy H1 makes provision for 9,350 new dwellings in Cherwell between 2001 and 2016, of which about 3,300 are identified for Bicester as one of the main locations in the county. Regarding employment, policy E1 says that, amongst other things, development should provide for activities that contribute to regional and local economic priorities, such as the educational, scientific and technological sectors. Such development should be located in or adjoining urban areas (or existing concentrations) with good access to housing by non car modes, as well as incorporating sustainable transport features.
 - 16 Policy E3, relating to the main towns, including Bicester, seeks to achieve an appropriate balance between the number and type of jobs and the size and skills of the local workforce, as well as providing for the expansion and relocation of existing businesses or those which need to be located in the area. The supporting text, at para 6.17, adds that Bicester could benefit from the expansion of knowledge and science based firms, moving on from research and development to manufacturing, due to its location close to Oxford and within the Oxford – Cambridge arc on the proposed East–West rail link.
 - 17 On biodiversity, policy E2 states that sites of at least national importance, such as Special Areas of Conservation (SAC), National Nature Reserves (NNR), Sites of Special Scientific Interest (SSSI) and those which support specially protected species, will be protected from damaging development. On other sites of acknowledged nature conservation importance, development will only be permitted if there is an overriding need or if damage to the ecological interest can be prevented by the use of conditions or obligations. Paras 5.6 and 5.7 of the supporting text refer to the Oxfordshire BAP and the need for planning policies to help safeguard, maintain and expand biodiversity resources associated with priority habitats or species, of which there should be no further net loss within the county.
 - 18 The Cherwell Local Plan (CLP), adopted in November 1996, allocates the site for employment uses under policy EMP1, with a central recreational area dividing it and containing the floodplain of the Langford Brook. Although it was prepared in a strategic context which preceded even that of the OSP 2011 and was originally intended to cover the period up to 2001, it remains the adopted Local Plan for the area. Most of its policies, including those relevant to this appeal, are “saved” under the transitional arrangements of the Planning and Compulsory Purchase Act 2004.
 - 19 Policy C1 says that development resulting in loss or damage to SSSIs or other areas of designated wildlife or scientific importance will not normally be permitted and that the Council will seek to protect sites of local nature conservation value, where the potential adverse effects of development will be a material consideration. Development that would

adversely affect any species protected under the 1981 Wildlife and Countryside Act and the EC Habitats Directive 1992 will not normally be permitted under policy C2

- 20 The Non Statutory Cherwell Local Plan 2011 (NSCLP) was adopted as interim policy for development control purposes by the Council in December 2004. Policy EMP1 continues to allocate the site mainly for employment generating development but policy T29 also reserves an area of land in the north west corner for a connecting railway and rail based multi modal public transport interchange, including a new station
21. Policy EN22 states that development proposals should retain features of nature conservation value and enhance them wherever possible. Conditions or obligations will be sought to secure protection, management or compensatory measures where appropriate. Where development may affect a known or potential site of nature conservation value, an ecological survey to establish the likely impact will be required under policy EN23. Under policy EN24, proposals that would result in damage to or loss of a site of ecological (or geological) value will not be permitted unless i) for an internationally important site there is no alternative solution and imperative reasons of overriding public interest, ii) for a nationally important site the reasons for the development clearly outweigh the ecological value and national policy to safeguard the network of such sites or iii) for a site of regional or local importance, the reasons clearly outweigh the ecological value. In all cases, damage must be kept to a minimum. Policy EN25 seeks the creation of new habitats, particularly those concerning priority habitats or species, in development proposals, including where such areas would further opportunities for environmental education and passive recreation

Planning History

- 22 The site has been identified for development since the adoption of the Bicester Local Plan in 1988 and formed part of an outline permission (CWS 329/87) for an urban extension at South East Bicester granted in July of that year. This allocated the land for employment development, with recreation on the central floodplain area, and was confirmed, in part, by a subsequent outline permission (CWS 937/88) that also covered a large area of land to the north of the railway lines in July 1991. In March 1996, the Council refused a full application (96/00321/F) by Unipart for B2 industrial buildings on the eastern end of the site for noise generation and nature conservation reasons

The Proposals

- 23 The scheme involves the erection of up to 500 new dwellings, including 30% affordable housing, with a range of size and type of units, together with land reserved for a primary school and community facilities to the west of the Langford Brook, which would be incorporated into a linear public open space. An arc of land in the north west corner of the site would also be reserved for a railway chord, to enable a link to be constructed between the two rail lines bordering the site at some time in the future, although a new station/multi modal transport interchange is no longer envisaged. To the east of the brook, in the central part of the site and dividing the residential development into two separate elements, an area of approximately 6.5 ha would be retained as a CWS, with limited public access. All vehicular access would be taken from four points along Gavray Drive, which have already been constructed as part of the Langford Village development

Other Agreed Facts

- 24 A letter dated 17 January 2006 from the Environment Agency (SCG App 2) confirms that they no longer have any objections to the scheme on the grounds of flood risk or surface

water runoff, subject to the imposition of appropriate detailed conditions. In the light of a letter dated 7 September 2005 from the Planning Archaeologist at Oxfordshire County Council (OCC) (SCG App 3), CDC acknowledged that there were no archaeological objections to a duplicate application considered on 8 December 2005. Similarly, an e-mail dated 13 January 2006 from Thames Water (SCG App 4) advises that they now have no reason to object to the surface water drainage proposals for the scheme. Accordingly, these "reasons for refusal" (nos 4, 5 and 7) are now agreed to have been overcome.

- 25 In addition, English Nature and Butterfly Conservation no longer object to the proposals, being content with the Marsh Fritillary Strategy (MFS) contained within the legal agreement (Doc 5), and CDC is also now satisfied that the overall scheme would comply with the policies referred to in "refusal reason" 6, as well as paras 44 - 48 of PPG 9. The legal agreement provides a mechanism to secure the long term retention, enhancement and management of the CWS. Hence, CDC provided no evidence on this matter for the inquiry. The agreement also confirms that all necessary on and off site infrastructure, as referred to in "refusal reason" 3, is capable of being provided and that the relevant financial and other contributions required would secure implementation at an appropriate point during the development of the site for new housing. It is also now common ground that all necessary services for 500 new dwellings and associated facilities are or could readily be made available via Gavray Drive to enable the development to commence without delay.

The Case for Gallagher Estates Limited (summary of the material points)

- 26 Although the development plan for the area consists of RPG 9 (as updated by the Regional Transport Strategy of July 2004), the OSP 2016 and the CLP, adopted in November 1996, the latter is now old and substantially out of date in many respects, not least in terms of compliance with relevant national guidance. Having been prepared to implement a structure plan approved as long ago as February 1992, CDC has recently confirmed as much in setting out their Local Development Scheme (LDS) (CD 41). In contrast, the OSP was adopted as recently as October 2005 and should therefore prevail in the event of conflict. It is noteworthy that the first "reason for refusal" does not rely on any alleged conflict with either RPG 9 or the OSP, whilst the second refers only to policy G1 of the OSP 2011.
- 27 The "reasons for refusal" also refer to the NSCLP but the history of that document, including the fact that at one stage it formally endorsed the use of this site for new housing, rather than employment, confirm that it should carry very limited weight in this case. In particular, CDC having abandoned the attempt to complete the statutory process in the face of a very high level of objections, none of which have been considered by an independent Inspector, the plan represents nothing more than an expression of the Council's view concerning the appropriate form of development on this site. Moreover, the document itself acknowledges on page 2 that it will be substantially out of date by 2006 because of the adoption of the OSP 2016. Nor is its progress being monitored for the reasons explained in para 7.3 on page 11 of the Annual Monitoring Report (AMR) (CD 40). In conclusion, it is considered that both the CLP and NSCLP should only carry weight to the extent that they are consistent with the adopted OSP 2016.
- 28 It is also relevant that OCC certified the Revised Deposit Draft Local Plan as being in conformity with the OSP 2011, with the Gavray Drive land allocated for new housing and the Pre - Inquiry Changes version, with the site returned to identification for employment development. Notwithstanding that the plan is considered as a whole in this respect, had it been regarded as a site whose location/size and/or characteristics were of strategic

importance, this could not have occurred, irrespective of land allocations elsewhere in and around the town

- 29 There is no issue between the Appellants and CDC as to the site's suitability for new housing and that it could be brought forward quickly, thereby making an early and effective contribution to meeting local housing needs (Keene para 3 39). This is important in the context of the recent failure to meet the strategic housing requirements of the OSP 2011, the need to maximise the delivery of new dwellings and the fact that new greenfield sites are agreed to be necessary. Moreover, the bulk of new housing relied on in the NSCLP is on one major, complex, site at South West Bicester (SWB), all of which is acknowledged in a recent Council Report to Committee (CD 54 paras 9 12 & 9 13). These comments reflect the Urban Potential Study (CD 15 paras 4 1 – 4 4), the LDS (CD 41 p 22) and the AMR (CD 40 paras 2 3, 4 2 & 4 3). The latter confirms the accumulative shortfall of 442 dwellings in relation to the OSP 2011 and that, without new allocations, there would be a shortfall of 505 dwellings by 2016.
- 30 With regard to new housing allocations in Bicester, even with no slippage, the relevant DPD would not be adopted until October 2009 at the earliest. It is partially dependent upon the outcome of the Employment Land Review, which is already late. The earliest any such sites could be relied upon to deliver completions would be about 2011. Nor, as the AMR makes clear (CD 40 para 10 9, p 23), is there any reserve of possible sites to make up the identified shortfalls, taking into account the relatively small amount of previously developed land available for new housing and the recent completion of the large sites at Slade Farm and Bicester Fields Farm (CD 40 Appendix 6 Table 2).
- 31 Given the very limited contribution from windfall sites of 17 units per annum (CD 40 Appendix 6 Table 5), CDC is critically dependent on the SWB site, as the new housing trajectory (Evans Appendix 5) confirms. It assumes that there will be no delays to that scheme from a "call in" inquiry or judicial review or for any other reasons. However, the optimistic completion figures for that site assumed in the NSCLP in December 2004 have since been progressively revised downwards as a result of a more rigorous assessment of deliverability. The latest estimate in September 2005 is that 620 dwellings could be built by 2011, assuming a start on site in mid 2007. Even this is highly questionable having regard to the delays that have already arisen with the development brief and submission of the planning application, as well as the complexities of development arising from the requirements of policy H13A of the NSCLP.
- 32 Assuming that the site comes forward in due course, it is not likely to be rapidly advanced and outside of SWB available contributions to local housing land supply are extremely limited. Even on the most favourable assumptions, there would be a shortfall of around 400 dwellings by 2008/9 and 2009/10 (Evans Appendix 5) against the OSP requirements. Should SWB fail to deliver as currently expected, for any number of possible reasons, an even more serious shortfall will develop with, at present, no alternatives available. In their evidence, the Council acknowledges that there has been a failure to meet the OSP requirements to 2001 and to 2011 and that without new greenfield sites coming forward there will be a failure to meet the OSP requirements to 2016, as contributions from SWB are not likely to be significant for some time to come. It is also accepted that this proposal reflects the guidance in para 31 of PPG 3 and would not undermine the housing strategy or create an over supply locally.
33. In summary, the development plan strategy for Bicester requires the provision of a significant amount of new housing in the town up to 2016, but the Council is now relying

almost entirely on one large site at SWB to achieve the OSP target, as the two large sites which have provided the majority of recent dwelling completions are both now finished. The SWB scheme is very controversial locally and will presumably continue to be opposed by many objectors. At best, this may well result in delays to the start of any development as the Council is belatedly recognising, as demonstrated in various committee reports during 2005, which clearly illustrate the decay in expectations of new housing delivery over time.

- 34 Regarding affordable housing, paras 3.30 and 3.35 of the NSCLP confirm the critical position in Cherwell, supported by the work of consultants in November 2004 (CD16) identifying an annual need of 686 units. This compares to actual delivery of only 337 over the last 4 years in the district. There is no evidence of any attempt to address this current shortfall and yet the Council resists the advice of paras 42 and 42(a) of PPG 3 in respect of this site, where around 150 new affordable dwellings could be provided quickly.
- 35 Both PPG 13 and PPS 6 are clear in relation to major generators of travel demand that they should be focused on city, town and district centres that are highly accessible and that offices are a key town centre use. If the NSCLP had been properly prepared it would have followed a sequential approach to site selection for such uses but the Council has undertaken no assessment of need for office or other B1 space. Nevertheless, it promotes out of centre development of that nature on this site. Analysis of the Urban Potential Study (CD15) shows that there are sites of varying sizes and types available for such uses in more central locations than Gavray Drive. There is no market assessment to demonstrate that the site is the only one suitable and available to meet a particular need and it is not an attractive location for the types of large office occupiers that the Council is apparently keen to attract.
- 36 The first "reason for refusal" does not allege any conflict with RPG9 or the economic strategy policies of the OSP. These aim to build steadily on local strengths and ensure that premises are available in appropriate locations for small businesses, local firms and those that need to be in Oxfordshire but not on a scale that encourages significant in-commuting, or attracts large footloose firms or B8 operations. This reflects advice in para 6 of PPG 4.
- 37 OSP policy E3 refers to an appropriate and not an exact "balance", whereas the Council's strategy at para 4.4 of the NSCLP precisely aligns the number of employed people with the number of jobs to be created. However, the Council's recent Draft Economic Development Strategy (Brisbane Appendix 11) looks for, broadly speaking, 6,000 new jobs across the district as a whole, not 6,000 in Bicester, by 2011. It is conceded by CDC that there is no support anywhere in government guidance for the approach set out in para 4.39 of the NSCLP and that these two figures are irreconcilable. As the district figure postdates that in the NSCLP it should be taken as correct. It is the "exact balance" approach that leads CDC to seek to retain this site for employment use, but if that approach is wrong in principle then the Council's stance on the future use of the site deserves to be reconsidered.
- 38 It is also relevant that independent consultants looked at the appropriate use for the site for CDC when the draft NSCLP was being prepared. Their report (Keene Appendix 5) reaches clear conclusions supporting the allocation of the site for housing and there was no criticism of their work when it was reviewed (Keene Appendix 4). In fact, it was endorsed with regard to the location and accessibility of the site and its suitability for housing. The main reason for the later rejection of their conclusions was the rail station proposal and the juxtaposition of housing and employment, but the former no longer applies as neither the new station nor the proposed transport interchange are going to come forward. The conclusions of the independent consultants, applying up to date government guidance in a clear and consistent way, were set aside on a basis which is no longer relevant or applicable.

- 39 The agreed elements of employment land supply are listed in para 9 2 of the SCG This supply, significantly supplemented by available modern premises and opportunities for redevelopment at outmoded ones (a total vacant available space of almost 42,000 sq m) appears to match well with the strategic aspirations of the OSP for the town It is fully endorsed by the Council's well advanced Economic Development Strategy (Brisbane Appendix 11), which looks to recycle urban land rather than simply provide new sites The ample current supply can meet anticipated future requirements arising from the OSP strategy, with a range of size and type of premises available to match appropriate demand
- 40 The site was fully marketed between 1996 and 1999 for new employment development The Council accepts that it would be unreasonable to have expected that to continue once the CLP review process was underway. Even so, the availability was well known, including to CDC as the site remains on their schedules. Neither CDC nor anyone else is aware of any serious interest since the refusal of the Unipart scheme or of any current enquiry that would require the use of such a site in the locality Now, employment land at SWB is also potentially available as it is being brought forward by its promoters.
41. Nor have the Council provided any evidence to demonstrate that the site will be taken up by the market or of any serious concern about employment land supply in the town In fact, their recent actions in considering the release of half of the Bessemer Road site for housing and refusing permission for a B1 scheme on land allocated in the CLP for employment at Skimmingdish Lane indicate the opposite Whilst very unfortunate that the promised employment land review is not yet available, there is no other evidence to support the claim of a shortage of employment land to meet market needs in Bicester All the market evidence, including that prepared for the Council, such as the Oxford Innovations Report (CD49), points in the other direction In these circumstances, the only result of keeping the site available for employment use would be to reinforce the negative market impression of Bicester as an unattractive location for major commercial investment
- 42 The economic analysis undertaken for the Appellants (Brisbane Appendix 8) is robust, credible and properly formulated It concludes that a balance between jobs and working population of about 82% would be achievable, without employment development on this site, and appropriate in the Bicester context Bicester is not only in the Oxford Travel to Work Area but is strategically acknowledged as a source of labour to help meet the need for employees there Consequently, the OSP and Local Transport Plan contain proposals to further improve high quality public transport links
- 43 Appendix 6 of the SCG confirms that there has been no new B1 development in the town between 2000 and 2004, but there is no suggestion that this arises from any limitation or problem with land supply. The Council accepts that there is no evidence of a current demand for employment development on this site and cannot point to any recent enquiry that would have required it to be made available Nor have they made any attempt to assess the potential viability of B1 development having regard to local rental values and site infrastructure costs
- 44 It is common ground that there has not been a single office letting of over 5,000 sq ft in Bicester in the last three years and that this is due to the market rather than any absence of premises or opportunities Accordingly, there is no basis for the assertion that a site of this size should be retained against some possible future requirement, when the range of land and premises available elsewhere in the town and on older sites suitable for redevelopment provide a more than adequate supply Any suggestion that new housing should be "back end

- loaded” over the next decade to allow employment provision in Bicester to “catch up” would be entirely inconsistent with the requirements of the OSP and should be rejected.
- 45 Notwithstanding the absence of both an up to date assessment of employment land provision and requirements in Bicester and the testing of opportunities for more centrally located sites for B1 uses, provided a realistic view is taken of achievable levels of self containment and economic growth in the town, there is a more than adequate supply of sites and premises, including for re-development. This is available to meet any reasonable requirement for employment land in the future, without this site.
- 46 Section 11 and Appendix 7 of the SCG confirm that there is no issue in relation to highways infrastructure or capacity, nor with regard to the accessibility by public transport and otherwise of the site. It is agreed that neither the new station nor the transport interchange proposal identified in the NSCLP will come forward. It is also now common ground that, even on the reduced scale now envisaged by CDC, B1 employment development on this site would generate more vehicle movements than residential use, particularly at peak hours. Despite assertions implicit in the second “reason for refusal” and identification as a key consideration in the County Council’s evidence, with the significant number of additional journeys arising from employment development on the site, there would be no reduction in the total vehicle mileage travelled when compared to residential use, rather the opposite, as indicated by the supplementary note produced at the inquiry (Doc 15 – final appendix).
- 47 Moreover, a largely B1 employment scheme, with the inevitable on site parking, would be located outside a town centre or centrally located site, with no new transport interchange or station. It would increase traffic flows on the local road network during peak times and require significant highway improvements to a greater degree than residential development. Some of those improvements cannot be guaranteed as deliverable on existing highway land. The costs involved would also have an influence on overall viability in circumstances where the economics of employment development are already unfavourable.
- 48 Taking into account current bus and rail services, especially to Oxford, and policy initiatives to assist local people who work away from Bicester to use public transport, there is no evidence to support the view that new housing, rather than employment, would produce or exacerbate unsustainable patterns of travel, particularly by private car. Both Councils accept that the juxtaposition of new employment with existing housing does not necessarily lead to lower levels of car use. National policy recognises that self containment, as regards jobs, people and dwellings, is not something to be looked at in relation to towns the size of Bicester but on a rather more strategic scale. Therefore, the advice in para 42(a) of PPG 3 should be applied and this site released for new housing, supported by appropriate transport/accessibility measures, as agreed in the Section 106 legal obligation, including enhancing public transport links to Oxford.
49. Whilst it predated the coming into force of the 2004 Act and the publication of PPS 1, the extensive pre-application community consultation conducted for the Appellants clearly followed the spirit and intentions of both. The outcome is therefore relevant and material, albeit not conclusive in itself, representing a properly established and locally informed view on the appropriate use for this land, due to the care and rigour of the exercise.
- 50 The ecological concerns raised by the BBOWT and Mr Woodfield are not shared by English Nature (EN), Butterfly Conservation (BC) or the County Ecologist (CE), each of whom has been directly involved in the formulation of the ecological strategy associated with this proposal. Unlike the objectors, these organisations have taken a holistic view of

the overall package and endorsed the positive benefits arising from the carefully formulated and fully funded proposals. The overall scheme, as now proposed, will represent a substantial enhancement of ecological resources, both within Bicester and more widely. Without it, the interest of the site will gradually expire, as evidenced by the processes already underway, with no prospect of any significant benefits enduring.

- 51 Regarding the EIA process, Schedule 4 para 4 of the Regulations requires a consideration of the "likely significant effects", not a consideration of all effects. It is also fundamental to the process that a view is taken on the scope of the EA at an early stage. In this case, the scoping was properly considered by a group of relevant and informed consultees, including EN, CE and the Council, who had the benefit of earlier survey work. It was properly conducted by suitably qualified people.
52. Paras 7.31 and 7.126 – 135 of the ES Volume 1 and Table 5 in Chapter 7 of Volume 2 demonstrate that suitably scoped and competently implemented bat surveys were carried out, the results considered and professional judgement applied to their ecological significance, all in accordance with the regulations. The full details of the surveys undertaken since the discovery of a Marsh Fritillary butterfly (MFB) on the site, as well as the ground truthing exercise, have been provided, with a judgement again applied that is not disputed by other competent bodies. The fact that it was missed in previous surveys is not indicative of a lack of competence, given that the site had been the subject of numerous extensive surveys by others, none of which had identified the MFB interest.
- 53 Paras 7.143 - 5 and 7.192 of the ES clarify the position in relation to invertebrates and none of the scoping work or comments on the scoping identified the need for any more significant surveys than were in fact undertaken. At paras 7.13 – 17 and 7.20, the ES makes clear the limitations of the surveys carried out but there was no indication of need for any more detailed work because the impact on the identified invertebrate habitat would not change and had been more than adequately addressed in the scheme.
- 54 Both the main text of the ES and appendices to Chapter 7 draw attention to the site's designation as a CWS and the reasons for that, including identification as lowland meadow. Examples include the table at p 148 of Volume 1, the reference at 7.9 (iii) to an earlier report and Appendices 1, 2, 6 and 11. The species list does not purport to be complete and the ES reaches conclusions with regard to the MG4 grassland (para 7.88 of Volume 1) that are similar to those of the BBOWT in appendix 2 of their inquiry evidence. Overall, no significant environmental effect has been overlooked in the process and, as a whole, it stands as an appropriate and legally satisfactory document.
- 55 Overall, national planning guidance encourages the reallocation of sites identified for employment, where such a use has not come forward, for new housing, in order to make full and most effective use of land suitable for development. In addition, major offices should be directed to town centre, or edge of centre, locations in accord with PPS 6. Where new housing delivery is a priority, as in Cherwell, this should be properly reflected in the decision making process to enable suitable sites to make an early and effective contribution to meeting local needs for both open market and affordable housing.

The Case for Cherwell District Council (summary of the material points)

- 56 Five of the seven grounds originally put forward as "refusal reasons" have since been resolved to the Council's satisfaction, subject to the imposition of appropriate conditions and the Section 106 legal agreement. However, the first two remain at issue between the Council and the Appellants. These relate firstly to residential use being contrary to the

allocation of the land for employment development in the adopted CLP and NSCLP and secondly, the sustainability of the location in the context of OSP 2011 policy G1

- 57 With the exception of the railway chord, recreation area and CWS, the site should remain allocated for employment as there is little other land in Bicester that could be developed immediately for this purpose. Although the Council no longer intends to reserve any part of the site for a multi-modal transport interchange, it is important for the future prosperity of the town that an appropriate supply of land for new employment remains available. The site is already served with appropriate road and sewerage infrastructure, having first been identified as suitable for employment as part of a comprehensive development of the eastern side of the town many years ago, the majority of which is now complete. If developed for housing instead, it would be to the detriment of Bicester in terms of strategic planning and economic considerations, as the Council seeks to achieve a more appropriate balance of housing and jobs and to change the dormitory character of the town by reducing out commuting. The loss of a vital element of the local employment "offer" will make Bicester less able to accommodate new and/or relocating businesses.
- 58 Commercial growth in the town has been dominated by warehousing and distribution uses in recent years. However, the Council considers that there is sufficient demand in the Bicester area to be confident that the site would be developed for mainly B1 and some B2 employment purposes in the near future, and at least within the OSP period to 2016, if this proposal is dismissed and serious marketing efforts are made, in contrast to the lack of activity since 1999. In particular, the town is in a favourable strategic position in both the Milton Keynes–Oxon–Bucks sub region and the Oxford–Cambridge arc and in a key location to take advantage of growth in the knowledge based sectors of the economy, as recognised by the County and District Councils. This is likely to give rise to increased demand for B1 space as a proportion of commercial property but much of the current local stock is old and unsuitable for modern needs, with opportunities for regeneration limited by fragmented ownerships and competition from other areas.
- 59 In accordance with the NSCLP, the use of the site should be mainly for B1 purposes, with some B2 industrial space on the eastern part of the site, away from existing residential areas and between the B1 development and the rail lines. It is not considered suitable for B8 (storage and distribution) schemes, nor mainly for B2 (industrial) use. The fact that permission was refused for a large B2 scheme on the eastern part in 1996 (Unipart) does not mean that the site is somehow inherently unsuitable for B1 offices, high tech, research and development or light industry, nor some limited B2 use on appropriate parts.
- 60 New employment land is required to meet the needs of a growing population and improve the balance between housing and jobs, thus enhancing sustainability. Essentially, this is the only site able to meet the short term requirement for new B1 development in the town. It is capable of providing for the expansion/relocation of existing local firms, the requirements of new businesses needing to locate in the Bicester area and a substantial number of jobs readily accessible from adjoining residential areas, notably Langford Village, by non car modes. The Council is concerned that much needed employment growth will not take place if current suitable allocations are lost to housing and that this would be likely to set an unwelcome precedent, encouraging owners of other employment land allocations to postpone development in the hope of obtaining a residential permission in the future.
- 61 Whilst housing delivery in the district has been below the strategic requirement, the Council is now working successfully with GOSE to resolve matters and is in a good position to meet the OSP targets to 2016. For example, last year's annual completions figure of 677 was

above the requirement of 623, with a significant urban extension on the southern edge of Banbury likely to be approved soon, as the First Secretary of State has now confirmed that it will not be "called-in" for his decision (Doc 27). Moreover, completions in recent years have on average exceeded the new OSP requirement in Bicester of 220 houses per year. The proposed SWB urban extension will provide the majority of the remaining dwellings required up to 2016. Nevertheless, the LDF Site Allocations DPD for Bicester and Central Oxfordshire, expected to be adopted in October 2009, will identify sites for more houses to ensure that delivery is not restrained by supply. This will be in time to provide for completions by 2016, if required. Consequently, there is no compelling need for new housing that should outweigh development plan policy in respect of this site. It remains needed for employment use and therefore the national policy guidance at para 42(a) of PPG 3 does not assist the case that the site should be developed for housing instead.

- 62 The Council acknowledges that there is a pressing need for more affordable homes across the district and that this site could provide around 150 such units at an early date (30% of 500). However, another way to help local people afford the housing that they need is to increase incomes and the Council's Economic Development Strategy aims to help by improving the range and quality of jobs in Bicester. This requires that land, such as this site, is readily available for modern businesses. Therefore, in this case, the need for both general market and affordable housing is outweighed by the need to preserve the land for employment uses and improve the sustainability of the town as a whole.
- 63 It is accepted that the site is in a reasonably sustainable location and that the likely weekday trip generation from employment will be greater than that from a residential use of the same site size, particularly in peak hours. Nevertheless, there are two main reasons for the Council's position that this scheme would be likely to give rise to an increase in the need to travel, particularly by private car, contrary to the principles of sustainability. Firstly, more housing will mean more out commuting, so worsening the present imbalance between jobs and housing in the town. The Census data for 2001 shows that a high proportion of Bicester's working adults travel relatively long distances to work, with over 60% going 5 km or more. If this land is used for housing, the current high rate of out commuting would increase, together with the overall need to travel. This is a prime concern of the OCC and the key reason that they support the use of the land for employment, rather than residential. In addition, other local employment sites would have to be found so that the traffic generated by those uses will be present in the town at some stage in the future in any event.
- 64 Secondly, the location and characteristics of the site make it relatively more sustainable for employment than residential. In particular, the town centre is approximately 1.3 km away and not many new residents would choose to walk, particularly with shopping, given the distance and nature of the pedestrian route, which involves crossing the railway line. Similar constraints apply in relation to links to other facilities, which would deter new residents from walking or cycling and encourage private car use for relatively short trips.
- 65 Economic growth is central to the national aim of delivering sustainable development and up to date planning and transport policies, such as those in the OSP to 2016, seek to promote modern business development in Bicester. The objective of strategic and local policies in both planning and economic fields is to create a better balance between the number of jobs and the employment needs of the population, to improve the quality and type of local work opportunities and to increase wages, so reducing out commuting and the dormitory characteristics of the town. This site remains needed for employment development, is readily available, and provides the necessary flexibility in terms of Bicester's employment offer. It has the capability of accommodating new and/or relocating

businesses of the scale and type required to make a significant change to the character and sustainability of the town and surrounding area. Accordingly, there are no material considerations arising that should outweigh the development plan policy allocation of the site as employment land and this appeal should be dismissed.

Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (the material points)

- 66 The development would result in the irrevocable direct loss and significant fragmentation of the important habitats that comprise this meadow complex and were the main reason for its designation as a CWS. The habitat that occurs on this site is a rare one, even on a European scale, with less than 1,500 ha of MG4 type (lowland meadow) grassland in the UK, and it represents a major resource in terms of Cherwell District. Contrary to popular belief, SSSIs are not necessarily the most important habitats in the UK but rather a “representative sample”, with other areas being of equal quality despite their lack of designation. Recent growing recognition of the importance of particular habitats for nature conservation and the establishment of the UK’s BAP led to the formalisation of a list of habitats deemed to be of the highest importance under the Countryside and Rights of Way (CROW) Act 2000. This requires, in Section 74, the publication of a list of habitats of principal importance for the conservation of biodiversity and imposes a duty to further their conservation.
- 67 The appellants’ ecological witness concurs with the identification of habitats within the area of the site to be developed as subject to Section 74 of the CROW Act 2000, the application of which is not limited to species. The Trust has recent experience of MG4 type grassland habitat creation in the county on a 60 ha site but does not expect plant communities there to meet the definition of Section 74 habitat for between 10 and 20 years and no other such successful projects have been documented to date. In particular, the MFS, as part of a five year proposal, is unlikely to achieve habitat restoration to compensate for the loss of species rich ancient grassland within this timeframe.
- 68 Whilst the most significant impact will be the direct loss of habitat, the proposal will also result in the fragmentation of remaining habitats, as well as the loss of important links between and around them. Ultimately, this will lead to decreased species diversity and therefore more damage to the existing nature conservation interest of the site, as has been the case elsewhere for butterfly and invertebrate populations. For example, the ES identifies areas such as fields 2 and 3, as well as hedgerow 5, as being of high importance to an invertebrate assemblage that is assessed as being of County importance.
- 69 In the Trust’s view, the lack of remaining opposition to the scheme from EN and BC does not alter the fact that the best future for the nature conservation interests on the eastern part of this site would be in the absence of any development. Notwithstanding, there is no objection to residential development west of the Langford Brook and a clear preference for employment development, rather than residential, to the east if this part of the site must be built on, as it is anticipated that less damage to nature conservation concerns would arise due to factors such as layout, density and public access.
- 70 With regard to the proposed ecological mitigation strategy, the timescale is inadequate and the resources insufficient to acquire any suitable land elsewhere in the locality. It would not properly compensate for the direct loss and fragmentation of habitats that would arise. PPS 9 (Key Principle 11) makes it clear that planning decisions should seek to “maintain, and enhance, restore or add to biodiversity conservation interests”. However, this proposal would neither protect nor enhance the biodiversity found on the site and the damage to the ecological resource has not been “kept to a minimum” in accordance with policy EN 24 of

the NSCLP. The enhancements proposed will not compensate for what will be lost, even if their secured management could be assured. Nor is it possible to prevent damage to the CWS by conditions or obligations, due to the nature and scale of the development, the only way to prevent harm to this ecological resource is to dismiss the appeal.

Mr D Woodfield (the material points)

71. The objections to this proposal are based on experience as a professional ecologist, which demonstrates that this is a site of exceptional importance to nature conservation. In this case failure to comply with professional standards has contributed to poor decisions about the type and extent of development that might be suitable for this site. Although the appellants have submitted further information since the original ES, this has not properly addressed the inadequacies of the baseline information and therefore the EIA remains unsound. In particular, the May 2005 discovery of marsh fritillary on the site, a fully protected butterfly species of national and international conservation importance, not only suggests that the evaluation of the site's ecological resource put forward by the appellants required revision but also exposed the fact that, in many respects, the earlier survey work was short of accepted standards.
72. Since then, despite the opportunity to rectify the deficiencies by undertaking further survey work to bring the ES up to standard, the appellants focussed almost exclusively on the marsh fritillary and, as previously, that work too has been based on a scientifically flawed application of inappropriate methods at the wrong time of year. The results are therefore at best inconclusive and at worst lack credibility. For example, despite strong indications of the site's wider importance for invertebrates, the failure to carry out a formal survey shows a disregard for accepted professional standards. Moreover, vegetation surveys were carried out in accordance with a substandard methodology and at an inappropriate season, resulting in key plant species being missed and nationally important grassland types being misidentified, incorrectly classified or undervalued. Similarly, critical deficiencies in relation to the surveys carried out for bats have not been rectified.
73. Amassing high quality baseline data is an essential prerequisite to a robust assessment of environmental impacts, whereas inadequate information can result in flawed assessments of value and a low level of confidence in the conclusions drawn from it. Both national guidance (Circular 06/2005) and case law (*R v Cornwall County Council ex parte Jill Hardy* – Queen's Bench Division, Harrison J – 22 September 2000) confirm the need for planning authorities to take account of "full" environmental information to ensure compliance with the EIA regulations.
74. The inadequacies of the baseline surveys provide sufficient grounds upon which to dismiss the appeal, in accord with the guidance in Circular 06/2005, for example paragraph 99. Moreover, in respect of bats and marsh fritillary, and their status under European and UK legislation, there is a legal precedent indicating that the survey work submitted does not meet the requirements of the Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999, thereby exposing any permission to possible challenge through the courts.
75. Notwithstanding the severe limitations of the original ES and later further information, it is apparent that the site contains ecological resources of substantive importance, justifying its designation as a CWS, in accordance with set criteria used in Oxfordshire. Although it is now common ground that only about 19% of the total CWS site area will be directly lost through this scheme, there would also be significant indirect impacts on the remainder, with

attendant effects on rare habitats and fauna, including specially protected and Section 74 species. In particular, the remaining portion of the CWS will be severed from the designated area to the east of the site, beyond the ring road, and the open countryside beyond, thereby compromising its ability to function as a coherent unit with habitat connections off-site. Moreover, the "beneficial" impacts anticipated for the long term assume that the ecological interest of the retained CWS can be secured through management. This is likely to be incompatible with the implicit assumption in the ES that it will be available for "informal recreation" and the pressures arising from proximity to housing, as well as its relatively small size. Consequently, it will lose both its intrinsic habitat value and its carrying capacity for individual species of interest within a few years of the first houses being occupied.

- 76 The key resource is the priority habitat "Lowland Meadow", including those communities with clear affinities to the MG4 and MG5 grasslands of the National Vegetation Classification, the bulk of which is found in fields 5, 6, 7, 11 and 12, identified in the ES. The direct loss of part of these areas of rare grassland would be a significant impact. In addition, the combined loss of adjoining fields 2, 3, and 4, which have an important role to play in supporting the site's invertebrate and herpetofauna assemblages, would have a further significant effect on a resource of county value.
- 77 In relation to national policy, para 9 of PPS 9 says that regional and local sites "have a fundamental role to play in meeting national biodiversity targets" and the around 10 ha of grassland habitats of "priority" importance under the UK BAP on this site are of "principle importance to biodiversity", in accordance with paras 11 and 14 of that guidance and paras 84 and 85 of Circular 06/2005, following the CROW Act 2000. The loss of part of the lowland meadow habitat, together with degradation of the remainder in the short to medium term, and the loss of the only currently known site for marsh fritillary in the county will be the most significant impacts.
- 78 The proposed mitigation strategy is incompatible with the other uses to which the area will be subjected and the negative effects compounded by the small size and fragmentation of the remaining resource. Moreover, the initial surveys carried out have indicated that scarce bat species could be present on the site but no further work has been carried out and no proper attempt made to assess the presence or absence of bat roosts. Legal precedent indicates that it is not sufficient to rely on a condition of permission to address this matter.
- 79 Although the land west of the Langford Brook is of minimal ecological importance and could reasonably be developed, this particular scheme would be severely damaging to biodiversity on the remainder of the site having been apparently drawn up in ignorance of key aspects of the ecological value. It conflicts with national law and local planning policies and the appeal should therefore be dismissed whilst a better long term solution is sought for the site.

Representations at the Inquiry

- 80 In response to my invitation, one local resident, Mr P Green, spoke briefly and essentially in support of the scheme and subsequently provided a written version of his comments (Doc 24). These can be summarised as follows, "The opinions of local residents regarding the real human issues involved in planning decisions need to be taken into account. It appears as though the Council's arguments for rejecting the housing option are unsupported by the facts and that there is more concern about the future of insects and amphibians than the welfare of those resident colonies of homo sapiens most directly affected".

Public Consultation

81 In relation to both the application subject to this appeal and a subsequent duplicate scheme (ref 05/01035/OUT), a large number of local residents, mainly from Langford Village to the south of the site, wrote to the Council to register their support in principle for residential, rather than industrial, development on the site

Written Representations

82 Chesterton Parish Council, in a letter of 8 June 2005 to PINS, supports the appeal confirming that they have no objections to the granting of outline planning permission for residential development (including affordable housing) and amenities.

Conclusions

83 In the light of all of the evidence and the debate at the inquiry, the written representations and my inspections of the site and surroundings, I consider that the main issues in this appeal are firstly, whether the site should be retained for future employment uses or used now for new housing, secondly, whether residential development would give rise to an unacceptable increase in the need to travel, particularly by private car and thirdly, whether the scheme would result in significant harm to the ecological interest of the site and, if so, whether that harm is outweighed by an overriding need for the development. References in square brackets give the sources in the preceding paragraphs on which they are based.

Housing

84 As confirmed in the SCG, there is no dispute that the site is suitable in principle for residential development [29], having been included in the revised deposit draft of the NSCLP for that purpose [28]. Moreover, that version of the plan was certified by the OCC as being in conformity with the OSP 2011, from which it may be taken that its use for new housing, rather than employment, did not in itself raise issues of significance for the implementation of the county strategy in relation to Bicester [28]. A report by independent consultants also endorsed the use of the site for new housing, including in terms of accessibility and location, whereas the CDC's later decision to revert to an employment allocation appears to have been strongly influenced by the transport interchange proposals, which have now been dropped [38]. Whilst I understand the preference of both Councils for mainly B1 use on a site that has been identified since 1988 and could provide a major boost to the town's employment offer, national guidance in PPG 3, notably para 42 (a), confirms that it is now appropriate to reconsider such long standing allocations that have not been taken up in the light of all relevant circumstances.

85 The fact that the CLP is now essentially out of date, having been drawn up in relation to much earlier strategic policies and before most of the currently relevant national guidance, such as PPG 3, strongly reinforces this conclusion [26]. In addition, I consider that the rather tortuous history of the emergence of the NSCLP, together with the failure to complete the statutory process so that it has not been the subject of independent examination or the testing of the many objections, materially reduce the weight that can reasonably be attached to its proposals and policies [27]. The effective abandonment of the multi-modal transport interchange proposal also suggests a certain lack of credibility in the NSCLP proposals for this site, at least in respect of the sustainability credentials for employment development comprising mainly B1 uses [46].

86 Turning to housing supply, the SCG confirms that in previous years the delivery of new units in Bicester and the district as a whole has been materially below strategic requirements, with little evidence of positive action to address the situation until very recently [61]. The CDC also acknowledges a pressing local need for more affordable homes [62] and that there are no outstanding constraints to the early commencement of housing development on this site [29]. Although efforts are now being made to bring forward the major NSCLP allocation at SWB, and a planning application is expected soon, CDC estimates suggest that, even on the most recent and optimistic assumptions of a start on site in mid 2007, only about 620 new dwellings are likely to be completed by 2011.

87 Moreover, the programme for adoption of the relevant land allocation DPD for Bicester in the LDS indicates that it would not take place until late 2009 at best, so completions on any other new sites identified therein could not be relied upon until 2011 at the earliest [30]. In

the absence of any significant areas of previously developed land within the existing built up area of the town deemed suitable for housing redevelopment [30], and a very limited supply of other/small windfall sites [31], it is clear that there is a heavy reliance on the SWB site if the OSP requirements are to be met

- 88 In the light of all the evidence, I share the concern regarding dependence on one large site to provide most of the town's new housing needs over the period to 2016, if only because experience elsewhere suggests that such schemes are often the subject of delays to commencement and completions for reasons largely unconnected to the operation of the land use planning system itself, such as valuation and negotiations between landowners and developers [31] When the present uncertainties surrounding the grant of outline planning permission, including legal agreements, major highway improvements and all other matters that have to be resolved first are taken into account, I doubt that actual delivery rates at SWB would correspond to those currently estimated by CDC, if only because of a delayed start date [32]
- 89 However, even if they do, there would still be significant short term underperformance in completions, measured against OSP requirements, of around 400 dwellings in 2007/8, 2008/9 and 2009/10, if no further greenfield sites are identified [32] Any delay, for whatever reason, at SWB would therefore exacerbate an already unsatisfactory situation, resulting in an even greater cumulative failure to meet delivery targets [29] In contrast, this site could provide 500 new houses in the early years of the remaining plan period to 2016 and thereby make an important contribution to "filling the gap" Otherwise, it is my judgement that the shortfall would be of such a scale as to raise concerns in relation to the implementation of strategic policies for the distribution and delivery of new housing around the county and meeting local needs in Bicester Similar considerations apply in respect of the provision of affordable housing, particularly in the light of the relatively poor record of provision over recent years [34]

Employment

- 90 Para 9 2 and Appendix 6 of the SCG identify a substantial supply of available land and premises in and around the town for B class employment If just the sites listed in para 9 2, including SWB, were to be developed it is estimated that over 3,700 new jobs would be provided, taking no account at all of re-use of the almost 42,000 sq m of presently vacant floorspace (or the possible expansion of the Bicester Village retail complex) [39] To my mind, such provision would more than adequately meet the town's contribution to the objective in the CDC's Draft Economic Development Strategy of 6,000 new jobs across the district as a whole by 2011 [37] It would also be consistent, in my judgement, with policy E3 of the OSP, which seeks an "appropriate" and not an exact balance between the numbers of economically active persons and jobs in Bicester To the extent that there is any conflict between this strategic aim and the contents of the NSCLP, it is clear that the adopted and more recent OSP must take priority [27]
- 91 The absence of an up to date comprehensive assessment of employment land provision and requirements in the district is unhelpful in assessing the potential of the town for economic growth However, the information that is available strongly supports the view that there is a readily available supply of a variety of size and type of sites and premises, including those suitable for re-development, to more than meet current market demand and reasonable future requirements [45] The fact that CDC has not carried out any analysis of other opportunities closer to the town centre than this site and their responses to a recent proposal on land allocated for employment development in the CLP at Skimmingdish Lane, as well

- as the potential re-development of the Bessemer Road site, do not demonstrate a serious concern over the lack of land or buildings for employment uses in and around the town [41]
- 92 Nor is there any evidence of a current interest in the site for mainly B1 use, either from potential occupiers or prospective developers [40] Moreover, CDC appears to have given no consideration to matters such as infrastructure costs or rental values and therefore the likely economic viability of new employment development here [41] In such circumstances, I do not attribute the lack of interest simply to the absence of marketing after 1999 This is particularly so as the site has now remained undeveloped for approaching 20 years, since it was first identified as suitable for employment development, during which time it was actively marketed and only the Unipart scheme has come forward to the planning application stage
- 93 The very low level of activity in office lettings (of over 5,000 sq ft) and for new B1 development in Bicester in recent years serves only to strengthen the conclusion that the site is not likely to be developed in the near future should it remain allocated for employment development [43] It is clearly not attractive to the market at present and there is no suggestion of public investment or compulsory purchase to alter this situation Nor, in my opinion, is this likely to alter significantly in the short term given the availability of other sites and premises in the town and the development costs in relation to the returns expected, as well as the less favoured location on the eastern side of town compared to SWB [44]
- 94 I conclude that there is a more than adequate supply of land and premises available in Bicester to meet current needs, an example being the more centrally located Station Approach area, where new B1 offices would be consistent with PPS 6 Also, it seems to me that the presently anticipated future employment requirements of the town, in accordance with the OSP, would be more readily met at SWB in a more commercially attractive and equally sustainable location, with good links to Oxford and the M40 motorway This should mean that the major new employment site in Bicester is better suited to meet any needs arising from knowledge and science based firms from the Oxford area, in accordance with para 6 17 of the OSP Additionally, much of the traffic generated would not have to pass around part of the town's by pass system, as would be the case with Gavray Drive
- 95 In the absence of a full review of provision, it has not been demonstrated that there is a realistic prospect of the site being utilised for new employment provision in the foreseeable future Even if the likelihood of new employment development taking place on the site in the near future was less clear cut, I consider that the urgent need for new housing provision described above should take priority under current circumstances and in accordance with PPG 3 para 42 (a) With reference to the tests therein, I conclude that this site no longer needs to be retained as an allocation for employment use and that the proposal meets the criteria in para 31 for the reasons set out elsewhere in this report It would be consistent with the strategy of the OSP and would not lead to an over provision of housing
- 96 In my judgement, the local strategy for economic development would not be undermined by the early use of this site to help provide the houses needed in the town to meet the requirements of the OSP I therefore conclude on the first main issue that the site should be used now for new housing, to help meet strategic requirements and local needs, including for affordable housing, rather than being retained for possible future employment development, particularly when that seems unlikely to occur under current circumstances

Sustainability

- 97 Neither the CDC nor any other party disputes that the site is in a relatively sustainable location, with reasonably good links to the town centre and other facilities, such as the town's railway stations, by means other than the private car [46 & 63] Whilst a few are marginally beyond the 2km walking distance favoured in PPG 13 as most likely to replace short car trips, the majority of local services can be accessed more easily, by walking (or cycling) along fairly flat and direct routes, including to the south in Langford Village. Although some involve the pedestrian level crossing of the very lightly utilised Oxford – Bicester rail line, as I saw on my visits, the route is well used by the public.
- 98 The site is also well placed for access to the town's cycle network. In particular, Gavray Drive forms part of the Sustrans National Cycle Network, providing a convenient route between the town centre to the west and east towards Launton. In addition, Chiltern Rail runs a taxibus service to and from Bicester North station, which currently passes close to the site and is readily capable of diversion to serve it (Baker paras 3.22 – 3.26). Taking into account the financial contributions to be made via the legal agreement (Doc 5), to help improve public transport services in the locality, I am satisfied that this scheme would constitute a sustainable form of development in accord with national guidance, regional strategy and strategic/local planning policies, notably G1 of the OSP 2016, in terms of location and accessibility.
- 99 There are no outstanding highway infrastructure or capacity objections and it is also agreed that, if the site were developed for mostly B1 employment as currently envisaged by CDC, the total vehicle mileage generated would be significantly greater than for residential (and associated) use [46 & 63]. Both Councils also accept that more extensive and costly off site highway improvements would be required for employment use, rather than housing [47]. In relation to out commuting, the 2001 Census data appears to confirm that, whilst a relatively high proportion of Bicester's working adults leave the town itself for jobs, a significant percentage do so to travel to Oxford, rather than any further afield [63]. This pattern of movement, providing vital support to the economy of the city, is not inconsistent with the overall county strategy and is to be reinforced by further investment in improving public transport links under the OSP and Local Transport Plan, following the Bicester Integrated Transport Study [48].
- 100 Building a new multi-modal transport interchange on the north western part of the site would clearly enhance its credentials as a sustainable location for new offices and other forms of employment development. However, now that only the rail chord linking the two lines is likely to be progressed, that major potential advantage no longer weighs in favour of B1 employment use, compared to residential [46]. In my opinion, even though the link should lead to an improvement in rail services for the town as a whole, it would not directly improve the accessibility of the site itself such that major generators of travel demand should be located there. Accordingly, the CDC's reliance on this site to achieve an exact balance between jobs and working population in Bicester, implicit if not explicit in the NSCLP, now seems to be flawed in principle and over optimistic in practice. This is particularly so given the town's strategic relationship with the city of Oxford, which is essentially endorsed by the OSP strategy.
- 101 Whilst creating a closer balance between the numbers of jobs available locally and the economically active residents in Bicester is a generally desirable aim, it has to be tinged with reality. For example, it is common ground that simply putting new employment alongside existing housing does not necessarily lead to lower levels of car usage or out

commuting [48] In this instance, the available evidence suggests that, for the former at least, the opposite will be the case, in comparison to residential development. This is partly due to the overall size and relatively peripheral location of the site. However, it is also a factor of the proposed emphasis on B1 office development, which is a major generator of travel demand and ought ideally to be sited in or on the edge of town centres in accord with national guidance such as PPS 1, PPS 6 and PPG 13 [59]. I conclude on the second issue that residential development on this site would not give rise to an unacceptable increase in the need to travel, including by private car, particularly when compared to the alternative of mainly B1 employment use.

Ecology

- 102 Both District and County Councils, English Nature and Butterfly Conservation are all now satisfied with the ecological baseline information, evaluation and assessment in the ES (CD 28) and ES Additional Information – Ecology (CD 34). In addition, the ECMS (Doc 28) and MFS (CD 35) are also deemed by those organisations to be appropriate mechanisms for implementing the ecological strategy via planning conditions and the legal agreement respectively (SCG para 10.2). Nor does anyone object to development west of the Langford Brook for ecological reasons [81].
- 103 However, BBOWT and Mr Woodfield make detailed criticisms and raise numerous concerns regarding both the EIA process and specific aspects of the proposals, including that there would be significant harm to the rare lowland meadow habitat east of the Langford Brook. This is one of the habitats of principal importance for biodiversity under Section 74 of the CROW Act 2000 and Annex C of Circular 06/2005 [66]. However, only about 3 ha of a total CWS of around 16.5 ha (roughly 19%), which is not subject to any statutory designations, would be lost to development, leaving approximately 6.5 ha west of the by-pass and just over 6 ha to the east [75].
- 104 Inevitably, the fragmentation of the CWS already created by the road would increase to a degree and this would have an effect on the remaining habitats currently present on the site [68]. Nevertheless, two extensive and similarly sized areas would remain and be positively managed for nature conservation purposes, with the western area at least in public ownership, unlike at present. Moreover, a significantly larger area would be retained under this proposal to the west of the road and east of the Langford Brook than under any of the alternative allocations for employment (or housing) use in the CLP and the various drafts of the NSCLP. The alternative scenario of no development would mean the likely continued degradation of most, if not all, of the ecological interest of the site in the absence of positive management of the grasslands. As I saw on my visit, this is already evident in certain respects, including overgrowth and scrub encroachment, arising from the lack of agricultural activity such as cutting and grazing [50].
- 105 The suggestion that employment development would have less impact than housing on the environmental value of the eastern part of the site is unsupported by evidence, other than the potential effect of access by new residents over the retained CWS. Provided that this is limited as proposed, I see no real difference arising given that a central area would remain undeveloped, but presumably without the agreed funding for future management under the employment option. Taking into account the needs of modern business operations, including for parking, delivery and circulation space, as well as the practicalities of building sizes and dispositions relative to one another, I do not agree that a mainly B1 use layout would, in fact, be more flexible and better able to retain existing site features, such as trees, hedges and ponds, or the linkages and corridors between them, than new housing.

- 106 Turning to the EIA process itself, the inquiry evidence confirms that the initial scoping was undertaken in consultation with the relevant bodies and organisations, including EN and the CE [51] Appropriately qualified and experienced people, with the advantages of earlier studies of the site and local knowledge, were involved [51] Consequently, I am satisfied that no significant environmental effect was omitted from the process The chance discovery of a single adult female MFB (*Eurodryas aurinia* - a protected species) on the site by Mr Woodfield in May 2005 could not reasonably have been anticipated by previous surveyors/researchers, given the absence of sightings of the species in the county over recent years [52] This "omission" has now been rectified through the ES Additional Information and MFS, including special measures relating to Field 7, where a single MFB larval web has been observed, in the legal agreement In my judgement, the less than optimal timing of some of this work does not undermine the basis of the strategy that has now emerged and agreed with BC and others to address this matter
- 107 The fact that, ideally, other strategies might be preferable from the narrow perspective of the establishment of a sustainable breeding colony of this species on this site does not alter my conclusion, which has to be based on wider considerations This is particularly so when the allocation of the site for development in an adopted local plan preceded its identification as a CWS, the MFB was previously thought to be extinct in the county and the unknown provenance of the single specimen observed in May 2005 Notwithstanding the presence of the plant with which it is most closely associated (devil's-bit scabious), as all the experts at the inquiry agreed, the extensive history of previous attempts at re-introduction at various locations and the distance of the site from the nearest known surviving colonies, as no other MFB has been noted within 15km of the site in the last 10 years and no other suitable habitat known or identified within a 4km radius, suggests that a "rare colonisation event" is unlikely to have occurred
- 108 The ES also confirms that the bat and reptile surveys were properly carried out, having first been scoped, and competent professional expertise and judgement applied to the results, according to their ecological significance [52] Similarly, based on the originally agreed scoping, sufficient attention was given to potential impacts on invertebrate colonies on the site [53] This did not identify or justify the need for any more detailed survey work, given that the likely effects could be reasonably assessed on the information collected and had already been taken into account in the proposed design/layout of the scheme Whilst more detail could have been provided in some instances, the test is whether further work was needed to assess the likely significant effects, as it is not necessary to consider every possible limited or very detailed effect that would not have an influence on the form or content of the proposal As para 98 of Circular 06/2005 confirms, there is no requirement to carry out additional surveys to satisfy professional curiosity
- 109 Similarly, the omission of a few plant species present on the site from a list which did not purport to be comprehensive does not invalidate the conclusions arising The fact that the ES effectively reached much the same conclusions as the BBOWT in relation to the nature and value of the lowland meadow grassland habitat on the site reinforces this conclusion, in my view [54] Accordingly, I am satisfied that the baseline data provided has been adequate to assess the likely significant environmental effects, following suitable initial scoping Therefore, I consider that this case is clearly distinguishable from "R v Cornwall County Council ex parte Jill Hardy - 2000", referred to on page 49 of "Planning for Biodiversity and Geological Conservation - A Guide to Good Practice" - ODPM et al - March 2006

- 110 With regard to mitigation, local experience suggests that it may well take many years to extend and fully recreate the lowland meadow type grassland habitat, so as to meet the Section 74 definition, within the retained part of the CWS [67] Notwithstanding, the advantages of an agreed management strategy with appropriate funding and public ownership of the land should ensure that the overall ecological value of this area is maintained and materially enhanced over time. Together with the ECMS to apply during the construction period, this should help to retain biodiversity in accord with the second key principle of PPS 9 and paras 84/85 of Circular 06/2005, on a site of local importance and in relation to protected species. The retention of existing features such as trees, hedges and ponds and the creation of new ones, together with links between them, as indicated on the illustrative development framework plan (plan D), would also be of relevance in this respect, not least with regard to invertebrates, consistent with the fourth and fifth key principles of PPS 9
- 111 I recognise the concerns expressed regarding the possible detrimental environmental impact on the retained CWS area of unlimited public access for recreational purposes [75] However, only limited access over a small number of defined routes is envisaged through the area, which will be under public ownership by the District Council and with funding for active management by an appropriate body. In such circumstances, it is reasonable to assume that these potentially conflicting interests can be satisfactorily and sustainably managed over time to ensure that ecological interests are not materially prejudiced. Examples of the successful management for nature conservation of grassland areas adjacent to new housing are described in the recent Good Practice Guide referred to above
- 112 The MFS will not lead directly to the acquisition of additional land in compensation for the loss of about 3 ha of the present CWS [70] It should, however, provide the opportunity to establish a sustainable meta-population of the butterfly in the locality, if at all possible, thereby restoring an element of biodiversity which had, apparently, been lost, in accord with PPS 9 and para 85 of Circular 06/2005. To my mind, such an outcome would be a clear net benefit of the proposals, particularly when compared to the alternatives, as the present situation on the site is not expected to continue for long without positive action
- 113 In conclusion, at the regional and strategic levels, policies E2 of RPG 9 and EN2 of the OSP confirm that biodiversity should be maintained and enhanced through planning decisions and damaging development prevented on sites supporting specially protected species. By reference to the relevant legislation, policy C2 of the CLP also opposes development that would adversely affect protected species, whilst C1 seeks to promote the general interests of nature conservation. I agree with the CDC, EN, BC and the CE that, taken as a whole, the scheme does not conflict with these policies. In the NSCLP, policy EN22 says that features of nature conservation value should be retained and enhanced, wherever possible, such as through the use of conditions and obligations and the provision of compensatory measures where appropriate, as proposed in this case
- 114 Regarding ecological surveys, policy EN23 requires their submission in connection with schemes affecting sites of nature conservation value, with the supporting text adding that they should be carried out by reputable consultants, using recognised methods appropriate to the task. In terms of protecting sites and species, policy EN24 states that the reasons for the development must clearly outweigh the ecological value if a proposal resulting in the loss of or damage to such sites is to be permitted and any damage kept to a minimum. Policy EN25 says that development adversely affecting protected species will not be permitted, whilst EN27 aims to secure new habitats in connection with development, particularly for priority species. Again, in common with the CDC and other relevant

bodies, I conclude that, overall, the requirements of these policies would be met and that damage to the ecological resource would be kept to a minimum. Moreover, I also consider that the survey work and mitigation/compensation measures now agreed as part of the proposals are consistent with the guidance in para 99 of Circular 06/2005.

- 115 Taken together, both the ES and the subsequent additional information have identified the likely significant environmental effects of the proposed development, in accordance with Schedule 4, Para 4 of the Regulations. For the reasons explained above I do not accept the view that there was any material failure to apply appropriate professional standards in the implementation of the EIA process and related studies. The significant package of protection/compensation measures would make a contribution to the unimproved grassland resource in the county, consistent with the relevant national, regional and local BAPs for the habitat types and protected species on the site. Accordingly, I conclude that neither the scale nor the extent of the development proposed need result in the destruction or significant harm to the ecological value or wider nature conservation interest of the CWS as it currently exists and as it would be if no further action is taken.
- 116 Therefore, I conclude on the third main issue that, overall, and taking into account all the planning conditions and provisions of the Section 106 legal agreement, including those that would apply in respect of mitigation for the loss of part of the CWS and the enhancement of the remainder, the scheme would not result in significant harm to the ecological interest of the site. Such harm that would arise as a result of the reduction in size of the CWS and the limited increase in fragmentation of the habitats present is clearly outweighed by the need for new housing to meet the requirements of the OSP for the town and district in this sustainable location, on a site which has been allocated for development for many years but is no longer needed for employment use.

Other matters

- 117 Regarding the other "further information" sought in relation to the original ES, additional archaeological work has been undertaken. A report of June 2005 by Cotswold Archaeology confirms that the area of the site to the north west of the Langford Brook has no significant features and low archaeological potential. Taken together with the earlier investigation of the south eastern part of the site by Oxford Archaeology in 1997, this confirms that, subject to a condition requiring a staged programme of investigation, there is no archaeological objection in principle to the development of the site.
- 118 On flood risk, it has now been confirmed that the existing surface water balancing ponds to the south of Gavray Drive were constructed with capacity to serve development on the land to the north of the road. Given that residential development is likely to have a lower impermeable area than commercial, thereby reducing anticipated flows, it is now common ground that the surface water drainage proposals for the site are suitable and acceptable.
- 119 I have also borne in mind the unusually strong level of public support for new housing on the site, albeit as an alternative to employment use, as reflected in letters to the Council and the results of the two extensive consultation exercises undertaken by the Appellants [49]. I conclude that the appeal should be allowed and outline planning permission granted subject to conditions and the provisions of the Section 106 legal agreement.

Conditions and Obligations

- 120 A list of suggested conditions (Doc 4) was fully discussed and agreed during the inquiry. In addition to the standard time limits for outline applications (applicable at the time of

submission) (nos 1-3), I accept the consensus view of the parties that, taking into account the nature and scale of the scheme subject to EIA, any permission should be limited to no more than 500 dwellings (no 6) and that no building should exceed three storeys in height (no 4) Similarly, in order to make the best use of land and achieve consistency with both PPG 3 and policy H3 of the OSP, an average density of not less than 35 dwellings per hectare, with not less than 30 dph in any phase, should be required across the site (no 5)

- 121 Discussions between the appellants and the District Council prior to the inquiry led to agreement that a Master Plan should be prepared and approved, before any reserved matters are submitted (no 7) and that the scheme should also be subject to Design Codes for the various phases (no 8) Having received an assurance from the Appellants that the 12 month time limit was considered adequate due to the amount of work completed to date, I endorse this approach to achieving a high quality design and layout as both appropriate and reasonable in the circumstances.
- 122 Although an unusually full and detailed level of public consultation has already been carried out by the Appellants in connection with this application (and a duplicate one), it was common ground that the local community should continue to be closely involved in decisions on the details of the scheme This would include in relation to the Master Plan, Design Codes and Ecological Construction Method Statement, in addition to reserved matters applications The proposed condition (no 10) would ensure that a public consultation strategy is prepared and followed, consistent with the advice in PPS 1 and the Council's Statement of Community Involvement
- 123 All parties are also agreed that, given the sensitivity of that part of the site to the east of the Langford Brook in nature conservation terms, an ECMS (no 11) is essential if it is to be built on and I agree In the light of all of the above, I further agree on the necessity of an implementation plan (no 12), to co-ordinate the timing of the various elements of additional preparatory work and the construction of the development itself, including in relation to any distinct phases or sub-phases, in compliance with policies G3 and H3 of the OSP
- 124 Regarding archaeology (no 13), surface water drainage (no 14), flood storage works (no 15) and foul drainage (no 16), previous objections in principle to the scheme have been withdrawn by the relevant bodies and organisations [24 & 25] on the strict understanding that appropriately worded conditions are imposed, to ensure that their detailed concerns over implementation are properly addressed All the currently available evidence, including from the Council [56 & 57], points to these matters being readily capable of resolution at reasonable cost and within a relatively short timescale Consequently, I consider it essential that such conditions are imposed to safeguard the interests identified and ensure that adequate infrastructure is provided alongside the new housing and associated facilities
- 125 Again, there is no dispute that appropriate and suitably located play areas need to be provided on the site (no 17), nor that noise assessments (no 18) should be undertaken before any new dwellings are occupied I too am satisfied that such conditions meet the necessary tests in this instance Although the exact details were debated at the inquiry, a consensus also emerged regarding the best methods for the proper protection of retained trees and hedges during the construction period and I am content that this would be achieved by the proposed condition's wording (no 19) Whilst I questioned the strict necessity for a condition requiring provision of fire hydrants in each phase to be the subject of an agreed scheme, the Appellants said that this would not be onerous and the District and County Councils pointed to the costs and difficulties of "retro-fitting", once the scheme had

been designed, let alone implemented, even in part. On balance, therefore, I take the view that this condition would not be unreasonable in the circumstances.

126 Finally, bearing in mind the relative proximity of existing housing to the south of Gavray Drive, a requirement to provide details of temporary site compounds and construction site parking seems sensible in order to minimise any impacts on the residential amenities of adjoining occupiers, in accord with the ES.

127 The signed legal agreement provides for a number of significant financial contributions to be made towards local services and facilities, each of which has been individually negotiated with the organisations concerned. In particular, contributions would be made towards education facilities, to enable the building of a new primary school, as well as the provision of public open space, play areas, landscaping and the CWS on the site, and indoor/outdoor sports pitches/centres and improvements to the Langford Village Hall off site, including their transfer into public ownership and for future maintenance. Local bus service and highway improvements, including at the Neunkirchen/Seelscheid Way, London Road and A41 junction, as well as other increased service provisions for the area, would also be funded. In addition, the legal agreement confirms the detailed arrangements for 30% of the new dwellings to be affordable housing, of which 88% would be in the social rented sector, including the transfer of land to a Registered Social Landlord at no cost.

128 Based on the advice in Circular 05/2005, I consider that all the matters addressed in the agreement are relevant to planning and directly related to the development proposed by virtue of the impacts otherwise imposed on services and facilities in Langford Village and Bicester. Moreover, in my opinion, the contributions agreed with the relevant authorities are related in scale and kind to the scheme in both physical and practical terms and reasonable in other respects, as well as necessary if the application is to be permitted.

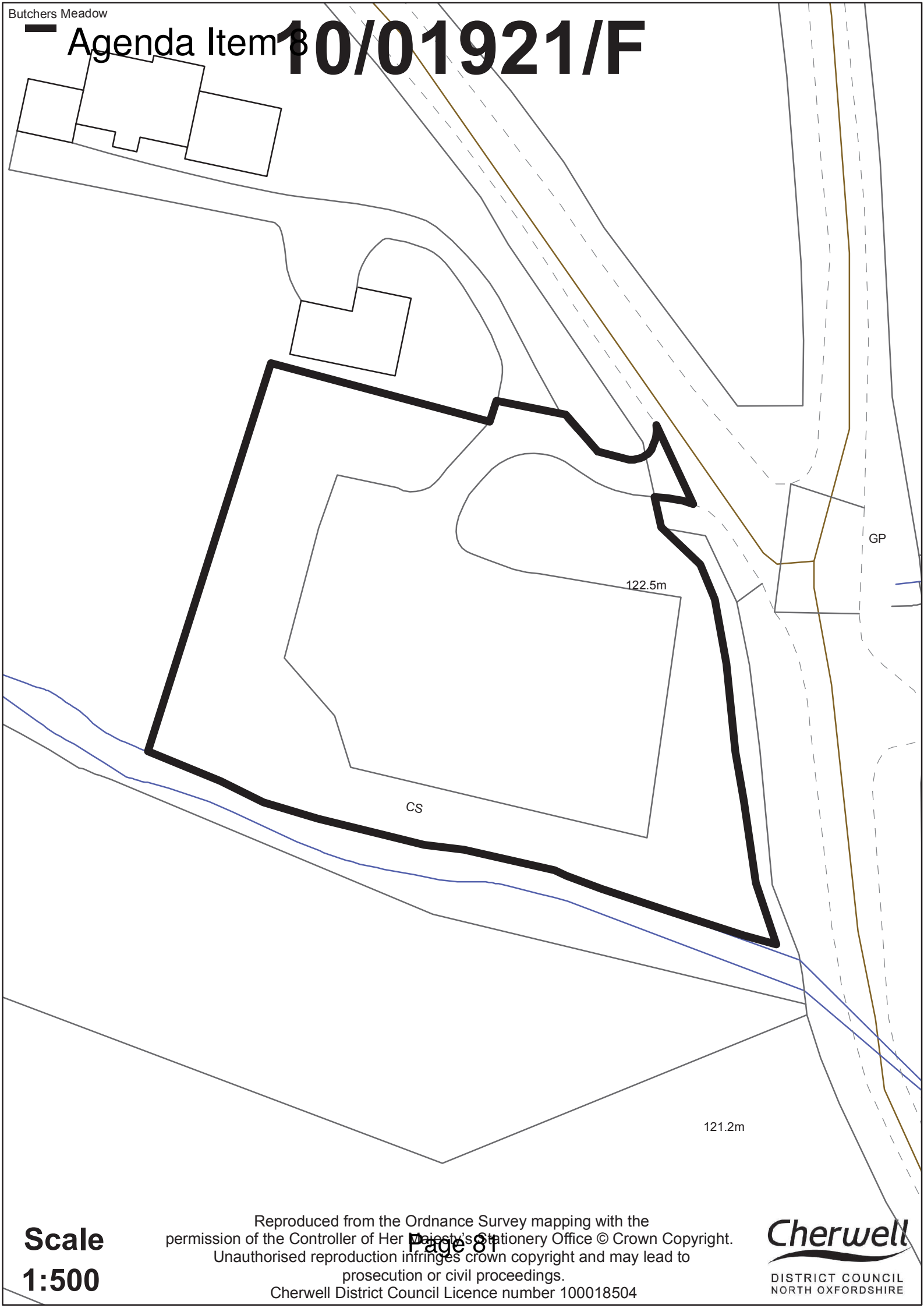
Recommendation

129 I recommend that the appeal be allowed and outline planning permission granted subject to the conditions set out in Annex A, (the wording of which have been slightly modified from the agreed list (Doc 4) in the interests of clarity and brevity).



Inspector

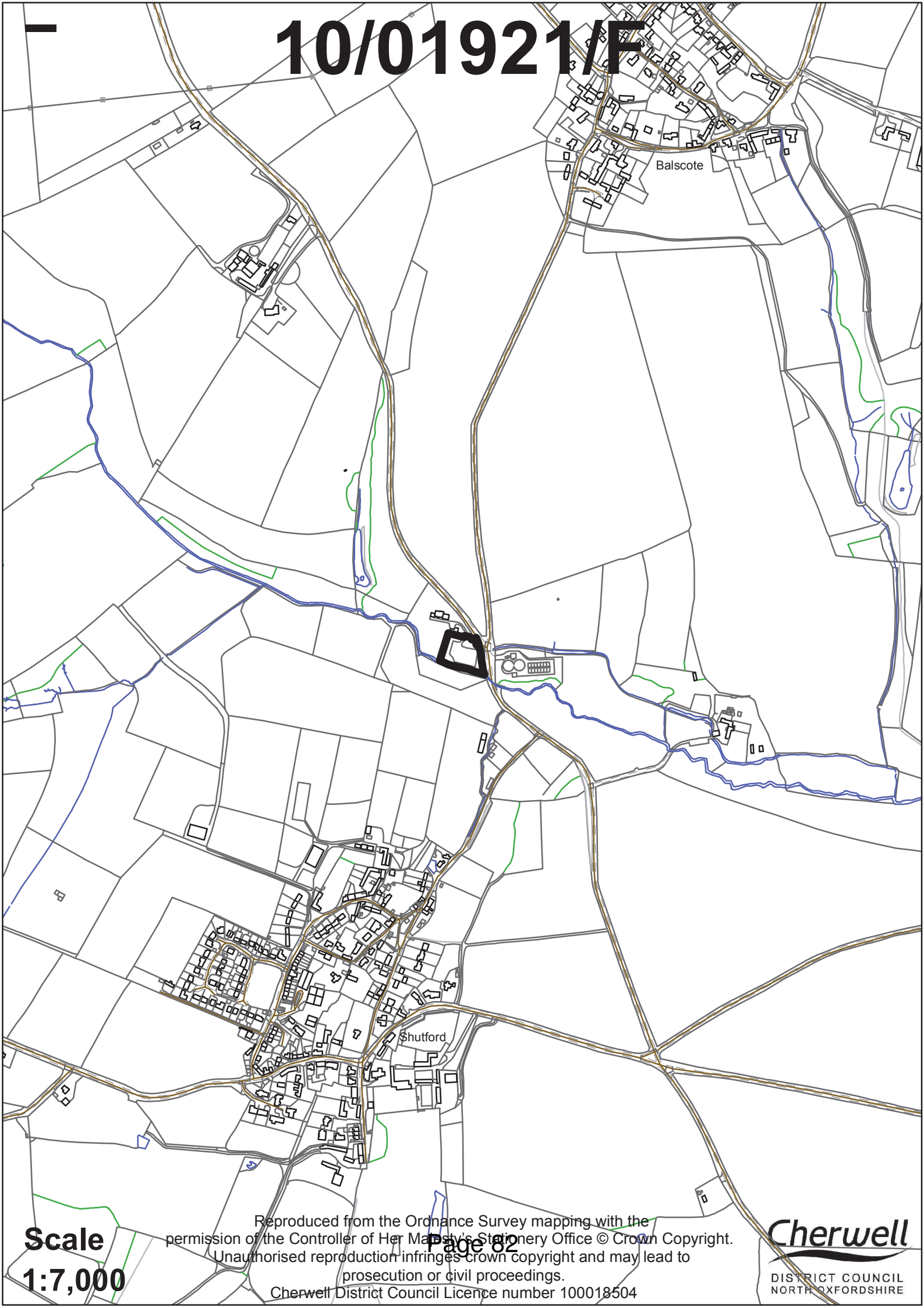
Agenda Item 3 10/01921/F



Scale
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Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Application 10/01921/F	No:	Ward: Wroxton	Date 05.01.2011	Valid:
Applicant:	Mr and Mrs M Walters, Butchers Meadow, Balscote, OX15 6EX			
Site Address:	Butchers Meadow, Balscote, Oxfordshire, OX15 6EX			

Proposal: Erection of two business units – previous application number: 06/01090/F

1. Site Description and Proposal

- 1.1 The application site known as Butchers Meadow is located within an open countryside location approximately a kilometer south of the village of Balscote. Vehicle access to the site is gained to the north east of the site serving the proposed business use and the existing dwelling on the site.
- 1.2 The site has had a range of previous commercial uses spanning back to the 1960's, including haulage and storage but all evidence of these previous uses has now been cleared from the site. The site of the proposed business units is a level site currently made up of some areas of poor hardstanding and rough grassland left from previous storage and distribution uses on the site. The level of the site rises to the north and west. The site is enclosed to the east and south by dense hedge planting and to the north east by a roadside hedge. The site is defined by post and rail fencing to the north west.
- 1.3 The site also accommodates a dwelling and associated garage which are located to the north of the application site on higher ground. The dwelling is unlawfully occupied in breach of an occupancy condition seeking occupation by people associated with the business uses on the site. An application to seek to remove this condition is currently being considered by the Local Planning Authority.
- 1.4 Site constraints include being situated within an Area of High Landscape Value, sited on a classified road, within the Northern Valleys Conservation Target Area, being on potentially contaminated land (due to previous uses on the site) and furthermore the application was supported by a phase one habitat survey. The site does not lie within a Conservation Area and there are no listed buildings on or within close proximity of the site.
- 1.5 This application seeks full planning permission for the erection of two business units to be located within a single building. The building is to be sited in the south east corner of the site. The building is of a ridge roof design to be constructed from brick and profiled metal sheeting to the elevations, plastic coated profiled metal roofing material and double glazed windows. The building dimensions are 7 metres high to the ridge of the roof, 5.2 metres to the eaves and 18 metres square in footprint.
- 1.6 **Relevant Planning History**
The planning history of the site is long and complex but for the proper consideration of this proposal the following is relevant:

- (i) commercial activity at Butchers Meadow has been in existence since at least the early 1960's. However the previous uses of the site for commercial purposes did not have the benefit of planning permission nor an established use or certificate of lawfulness (existing);
- (ii) nevertheless in 1983 the workshop building then on the site was granted planning permission subject to a condition requiring it to be used solely for the repair of vehicles, plant and equipment operated and owned by the previous owner of the site;
- (iii) the current owner did not have the benefit of planning permission for the previous commercial activity on the site, however it is clear that an established commercial use on the site has existed since the 1960's. Had a certificate of lawfulness (existing) been sought it is likely that the Local Planning Authority would have granted it, confirming the commercial use of the site.
- (iv) In 1998, an application (98/01386/F) was submitted which sought approval for the change of use from haulage and storage and erection of 2 no. workshop buildings with associated alterations to highway access. This application was approved on the 10th August 2001, delayed because of the need for a S106 legal agreement which also involved another application 99/01347/F relating to the adjacent dwelling and lessees of the workshop site. Essentially the legal agreement was to ensure that the proposed workshop buildings were not occupied or used until all previous commercial activity on the land to the west had ceased and all buildings, plant and machinery and vehicles had been removed and land restored to agriculture. This was to ensure the cleaning up of the previous uses. Following the granting of permission under 98/01386/F the approved access arrangements were implemented and put in place including the closing up of the previous access to the south. However, it is not clear whether this work was carried out under the planning permission for the workshop units or the planning permission for the dwelling and it is therefore difficult to ascertain whether a legal start was ever made on the permission granted in 1998 for the workshop units.
- (v) In 2006, an application 06/01090/F was submitted to renew the permission granted under 98/01386/F. No material changes had occurred since the previous approval on the 10th August 2001 and therefore approval was granted to renew planning permission for the workshop units with an amended S106 agreement. This planning permission was granted on the 12th June 2007 and expired on the 12th June 2010.
- (vi) Following the 2006 application being granted the unlawful building previously on the site and the associated unlawful storage and haulage uses and associated materials were cleared from the site and today the site is cleared of evidence of its previous uses apart from some remaining poor quality hard standing in the south east corner of the site. The area to the south west has been restored to paddock.
- (vii) The dwelling on the site has a long and complex history. The main points which are relevant to the consideration of this application are that it was granted permission under 99/01347/F with a condition attached restricting the occupancy of the dwelling by persons last or solely employed in the commercial operations within the previous building on the site (now removed) and on the land relating to application

98/01386/F if that was to be commenced.

2. Application Publicity

- 2.1 The application was advertised by way of a site notice, press notice and neighbour notification letters. The final date for comment was the 17 February 2011.
- 2.2 No letters of representation have been received.

3. Consultations

- 3.1 **Wroxton Parish Council** has no objections to the application.
- 3.2 **Local Highway Authority** raise no objection to the scheme subject to suggested conditions.
A condition to seek the submission for details for the access surface, construction and vision splays
There would appear to be enough space to provide both the level of parking and a reasonable turning space further plans are required to show the internal layout so it can be identified and secured.

In offering the above for consideration OCC has had regard to the history of the site and that there is some evidence to suggest that there remains some hard standing and that some work has been carried out following the 06 consent. Clearly this is not a site which is sustainable although there have been submissions which have sought to substantiate a view contrary to this assessment.

It is considered advisable that the area occupied by the building and the service provision should be confined to that proposed.

- 3.3 **The Council's Ecology Officer** has raised concern that the potential ecological value of the site has not been addressed as no ecological information was originally submitted with the application. There is a watercourse bordering the site to the south with records of Watervole further up the watercourse.

There is a Local Wildlife Site 100m from this site which is valuable for its wet vegetation and species rich grassland and I would want to be certain that this will not be impacted in any way from being situated further along an adjoining watercourse, or as a result of future usage of the workshops. A phase 1 survey would help address this points.

The proposals fall within the Northern Valleys CTA. CTAs identify areas of opportunity for biodiversity (not a constraint) and therefore should permission be granted I would be looking for enhancements on site which fit in with the aims of this CTA. These include any opportunities to restore or create areas of species rich grassland or streamside/fen/wet grassland or measures to benefit farmland birds. These could be carried out at whatever is an appropriate scale.

I notice there are no specific plans for proposed enhancements included within this application (or do those from 06/01090/F still stand?).

Should permission be given the applicant should be aware that there is potential for badgers to use the site and should there be any setts within or adjacent to the site these would pose a constraint and further advice should be sought. Any trees or scrub to be removed should be done outside of the bird breeding season. There may be potential for reptiles to be on site which are protected from killing and injury. Vegetation to be affected on site should therefore be trimmed directionally (starting from one end) at a time when reptiles are active (summer) and kept short to dissuade any reptiles from staying on parts of the site to be affected.

The Council's Ecology Officer's response to the submitted Ecology survey -

am satisfied that there are no specific protected species issues on site and therefore that they pose no constraints to any permission granted as long as recommendations 1, 2 and 5 as written in section 5.0 of the report are conditioned (i.e. avoidance of harm to reptiles and amphibians, maintenance of a 6m or greater buffer of vegetation to the stream, removal of any hedges/scrub outside of bird nesting season).

The more general recommendations included in section 5.0 of the report regarding enhancements for biodiversity are appropriate given the habitats identified on site. In particular the addition of swift nesting cavities within the buildings (or external boxes) and the planting of a hedgerow of native species to the west would be beneficial at this location and in line with PPS9.

- 3.4 **The Council's Environmental Protection Officer** has considered the following report, Listers Geotechnical Consultants Desk Study Investigation Report (no. 06.08.018, dated September 2006) which was submitted with application 06/01090/F.

This report follows a logical and thorough sequence in line with current best practise throughout the report until the conclusion. The summary of environmental risk had identified potential sources of contamination i.e. the potentially infilled mill run and the historical land use as a haulage yard. The conclusions then rule out the possibility of pollutant linkages to end users of the development because:

"potential contamination sources have decreased with the removal of the lorries and diesel/oil from the site in 2001" and "the proposal states that more hardcore will be added to the site and this will prevent workers from coming into contact with any contamination".

These conclusions will need further clarification why 20 years of fuel storage, vehicle maintenance / repair on the site will not have resulted in potential land contamination which may affect the end users of the site. Clarification of what consideration was given to the potential risk from hydrocarbon vapour should also be requested as this does not seem to have been considered in the report conclusions. As it was reported that made ground is likely to be present on the site, I would also like to see some analysis and / or soil logging on the site to support the conclusions that this development will not be affected by contamination. It is also noted that potential asbestos containing materials were not mentioned during the site walkover although storage of old building materials is referred to. Clarification of whether the possibility of the presence of asbestos on site was considered during the risk assessment should also be requested.

I recommend that the EA is consulted on the risk to controlled waters to ensure they agree with this preliminary risk assessment.

It is also noted that this report was written in 2006. At the level of site investigation involved in this report, guidance on risk assessment has not changed significantly, therefore the age of this report would not require a new version is submitted solely due to the age of the report. I recommend requesting a statement of the site uses since the date of this report though.

I recommend that the above issues are responded to prior to me recommending conditions, although sufficient information to characterise the risk from contamination on site will be required prior to commencement of development works.

Environmental Protection Officer Further Comments – Suggested condition to seek details regarding contamination on the site.

- 3.5 **Thames Water** raise the following comments:
Surface Water Drainage - With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of Ground Water. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required. They can be contacted on 0845 850 2777. Reason - to ensure that the surface water discharge from the site shall not be detrimental to the existing sewerage system.

There are public sewers crossing or close to your development. In order to protect public sewers and to ensure that Thames Water can gain access to those sewers for future repair and maintenance, approval must be sought from Thames Water where the erection of a building or an extension to a building or underpinning work would be over the line of, or would come within 3 metres of, a public sewer. Thames Water will usually refuse such approval in respect of the construction of new buildings, but approval may be granted in some cases for extensions to existing buildings. The applicant is advised to contact Thames Water Developer Services on 0845 850 2777 to discuss the options available at this site.

Water Comments

On the basis of information provided, Thames Water would advise that with regard to water infrastructure we would not have any objection to the above planning application.

- 3.6 **Oxfordshire County Council Mineral Planning Authority** raises no objection to the scheme on the grounds of mineral sterilization.
- 3.7 **Environment Agency** awaiting a response

4. Relevant Planning Policies

4.1 South East Plan

CC7 – Infrastructure and implementation
RE3 – Employment and Land provision
T4 – Parking
T7 – Rural Transport
NRM1 – Sustainable water resources and groundwater quality
NRM2 – Water Quality
NRM5 – Conservation and Improvement of Biodiversity

4.2 Adopted Cherwell Local Plan

Policy EMP4 – Employment generating development in the rural areas
Policy TR7 – Development affecting traffic on minor roads
Policy C7 – Landscape conservation
Policy C9 – Scale of development compatible with a rural location
Policy C13 – Area of high landscape value
Policy C28 – Layout, design and external appearance of new development
Policy ENV12 – Development on contaminated land

4.3 Non Statutory Cherwell Local Plan

Policy EN34 – Conserve and enhance the character and appearance of the landscape
Policy EN13 – Development adjacent to watercourses

4.4 National planning policy

PPS1 – Delivering Sustainable Development
PPS4 – Planning for Sustainable Economic Growth
PPS9 – Biodiversity and Geological Conservation
PPS13 - Transport
PPS23 – Planning and pollution Control

5. Appraisal

5.1 Main Planning Considerations

The main issues to consider in the determination of this planning application are as follows:

- Planning Policies
- Planning History and the principle of new development
- Highway impact
- Landscape impact
- Design and neighbouring amenities
- Ecology
- Contamination

Each of the above points will be considered in turn.

5.2 Planning Policies

Neither the adopted Cherwell Local Plan nor the Non-Statutory Cherwell Local Plan contain any policies which seek to allocate the application site for development.

Policy EMP4 of the adopted Cherwell local plan considers employment development in rural areas and supports employment generating development within an existing acceptable employment site, including redevelopment. All previous commercial uses on the application site have been removed and have ceased and therefore there is no longer an existing commercial use on the site. The site can no longer be considered under adopted Cherwell local plan policy EMP4 as it has previously been considered under previous applications on the site.

The site clearly lies beyond the existing built up limits of any settlement and is therefore located within an area of open countryside and within an area of high landscape value. Policy C13 of the adopted Local Plan seeks to conserve and enhance the environment within these designated areas.

- 5.3 Policy RE3 of the South East Plan looks at supply of employment land and advises that provision should be made within Local Development Documents. These identified sites should be identified through employment land reviews and should be located on sites accessible to existing and proposed labour supply, make efficient use of existing and underused sites, focus in urban areas and promote use of public transport.

Policy CC7 of the South East Plan states that the scale of development will depend on sufficient capacity being available in the existing infrastructure.

- 5.4 Planning Policy Statement 4: Planning for Sustainable Economic Growth (PPS4) seeks to strictly control economic development in the open countryside away from existing settlements, or outside areas allocated for development in development plans. The aim is to site most new development in or on the edge of existing settlements where employment, housing, services and other facilities can be provided close together.

5.5 Planning history and the principle of new development

The planning policy background set out above does not support new economic development within the open countryside and therefore in order to overcome this policy issue we need to consider whether there are any material considerations which outweigh the fact that the scheme is contrary to policy.

- 5.6 The site in question has a long and complex planning history which is briefly set out at para. 1.3 above. The site clearly has a history of substantial commercial uses from as far back as the 1960's, even though much of these uses did not benefit from a formal planning permission it is clear that an established commercial use was evident on the site for many years. In more recent years the site has benefitted from planning permission for the erection of two workshop units located in the south east corner of the site with associated access and car parking. This permission expired on the 12th June 2010. This permission was also linked to a S106 legal agreement which in basic terms sought to tidy up the site and ensure that the occupation of the dwelling was tied to the previous workshop units or any units built under the 1998 or 2007 permission. The site has been provided by a new vehicle access as part of the previous planning permission for the dwelling and the workshop units. Since the most recent applications were granted in 2001 and 2007 the site has been tidied up in accordance with the terms of the legal agreements associated with the site leaving the south west of the site restored to paddock and the south east part of the site as leveled hard-standing. However we must

remember that up until June 2010 (6 months previous to this current application being submitted) the applicant's could have commenced work on the development granted under 06/01090/F for the construction of 2 workshop units and associated works. This is a finally balanced argument between relevant planning policy and planning history of the site and in this case I have taken a sympathetic approach to the site history to overcome the policy position. Taking into account the previous history on the site I am of the opinion that this is a material consideration which should be given considerable weight and in my view would overcome the policy position in respect of this proposed development.

5.7 Highway Impact

Government advice contained with PPS1 and PPS13 seeks to locate development as sustainably as possible within existing settlements and close to existing services. The site is located within an open countryside location where access to existing transport services and other services is limited, however, the agent has illustrated that the site could be accessed via public transport, however the service is irregular. The agent also states that the sites in accessible by cycling however it is not considered that either public transport or cycling would be the preferred choice of transport in this isolated location.

5.8 In the opinion of the Local Highway Authority the history of the site is an important material planning consideration which illustrates that some works have been carried out, provision of the access and hardstanding, illustrating the applicant's intention to commence the works on the previous workshop permission, however the units were never provided. Given the history and previous uses of the site which illustrate a long period of previous commercial uses and the provision of an improved access it is considered that this would outweigh the sustainability issues and it is my opinion that the refusal of the application on highway grounds due to the sites unsustainable location would not be robust enough in an appeal situation.

5.9 The existing access to the site appears to have been constructed under the previous planning permission granted for the workshop units which were never provided on the site. However, conditions relating to the exact standard of surfacing of the access and vision splays seem to have never agreed. The access which is in place in terms of its location is acceptable however a condition has been suggested to agree details of the construction of the access and vision splays prior to development commencing.

5.10 Landscape Impact

The site is located within an area of High Landscape Value. The site is currently bounded by a watercourse and high trees to the south, a high conifer hedge to the eastern boundary south of the access track, a native hedge on the boundary to the north of the access and the site of the workshop is open to the west enclosed by a bund as there is a change in levels as the paddock and dwelling are located on higher ground. Timber open fencing encloses the land on the north western boundary of the site.

5.11 The new workshop building will be sited in the south east corner of the site enclosed to the south and east by existing high conifers and deciduous trees screening the site from views from the south east. The north eastern boundary of the site to the north of the access is bounded by a native hedge and immediately to the north of the proposed building are a row of high conifers and therefore approaching the site

from the north views of the building will be very limited and mostly non-existent. The building will be visible from the north west from within the site area, however, distant view from the north west will be limited due to existing trees and the lie of the land. Based on the above assessment it is considered that the proposal would cause a negligible impact on the visual amenities of the area and therefore the proposal would be considered to be in accordance with adopted Cherwell Local Plan policy C7 and C13 and Policy EN34 of the Non-Statutory Cherwell Local Plan.

5.12 Design and neighbouring amenities

The design and external appearance of the building has not change from that previous considered under the 2006 application. The building measures 18.3 metres by 18m footprint and 7 metres in height to the ridge and 5.3 metres to the eaves. External materials are profiled metal roof and reclaimed facing brick and metal green cladding to the elevations. The agricultural appearance of the building is considered appropriate for its rural location. The quality of the materials is considered poor with use of profiled metal cladding and roofing. A suitable condition will be attached to seek alternative material details to be considered and approved prior to development commencing. The scale of the building is considered appropriate and the design is appropriate with appropriate materials agreed and the scheme is therefore considered to be in accordance with adopted Cherwell Local Plan policy C28 and Policy EN34 of the Non-Statutory Cherwell Local Plan.

- 5.13 The site of the proposed development is located adjacent to the dwelling known as Butchers Meadow. This dwelling is currently occupied by the applicants of this planning application. The application has been submitted alongside an application to vary previous S106 legal agreements attached to the site and to put in place a revised S106 agreement which seeks to ensure that in the event of the commencement of the workshop development (if approved) under 10/01921/F not to dispose of the freehold of the workshop development separately from the remainder of freehold of the land. This would ensure that anyone who occupies the dwelling is associated with the activities taking place at the workshop units and will avoid any adverse impact being caused on unrelated occupiers within the nearby dwelling. In this case the proposed development would not be considered to adversely affect neighbouring properties. There are no other closely associated dwellings likely to be affected by the proposal.

5.14 Ecology

The site lies adjacent to a watercourse which runs immediately to the south of the site, which contains records of water vole further up the watercourse. There is a local wildlife site 200m from the applicant site valued for its wet vegetation and species rich grassland. The proposals fall within the Northern Valleys Conservation Target Area (CTAs), these areas identify opportunities for biodiversity enhancement.

- 5.15 PPS9: Biodiversity and Geological Conservation places a duty upon local planning authorities to ensure that a protected species survey be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. PPS9 states that "It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the

decision.” Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity” and;

Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.

- 5.16 A Phase One habitat survey dated the 22nd March has been submitted to support the application which comes to the following conclusions:
- The habitats present are not considered to be typically species-rich.
 - All habitats within the site were considered botanically species poor.
 - It is considered unlikely that the Balscote and Wroxton Mills Local Wildlife Site (LWS) would be adversely affected by the proposal providing the Environment Agency’s guidelines in respect of pollution prevention and control near watercourses is adhered to.
 - No evidence of watervole was recorded and the stream was subsequently considered to have Low-Medium potential for otter, watervole and white-clawed clayfish and the Environment Agency’s guidelines in respect of pollution prevention and control near watercourses is adhered to.
 - Within the site habitat likely to be used by great-crested newts or grass snakes is the tall vegetation and the stone piles. Despite the potential for these species within the site this potential could be minimised by the removal of the long grass and stone piles at a suitable time of year.

- 5.17 The recommendations of the survey concludes that no further survey work is required and sets out suitable measures to minimise any potential risk of harm or injury and to compensate for a minor loss of habitat. The proposed development is very unlikely to cause a offence to be committed in respect of protected species providing the recommendations are adhered to. Natural England and the Council’s Ecologist have been consulted and the recommendations will be added to the recommendation as notes to the applicant along with those specified in the Ecolocation report.

Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with PPS9 and Policies C2 and C4 of the adopted Cherwell Local Plan.

- 5.18 Contamination

The site may be the subject of contamination due to previous uses on the site. A Geotechnical report dated September 2006 has been submitted to support the application. The Council’s Environmental Protection Officer has considered the

report and its recommendations and concluded that the site has a potential to be affected by contaminants. The existing survey works does not include enough detail on the risks from contamination and measures to address possible contaminants therefore pre-commencement conditions are suggested to ensure all appropriate work is carried out on the site in relation to contamination and in line with PPS9.

5.19 Conclusion

Having regard to the comments above it is considered that the development of the site in question for 2 workshop units and associated parking, turning and access is acceptable. The assessment made above regarding planning policy and the planning history of the site is a finally balanced argument, however, it is my view that the development is considered to be acceptable on its planning merits as the site of the proposal benefits from a long and complex planning history which includes long periods of use of the site for storage and haulage and past planning permissions for workshop development of a very similar nature to the current proposed scheme which was still an extant permission less than 12 months ago. The proposed development is considered to sit comfortably within the locality with no harm caused to the special landscape designation, without harm to neighbouring properties and without harm to highway safety. It is my opinion therefore to recommend the application be recommended for approval subject to the applicants entering into an agreement and a number of conditions.

6. Recommendation

Approval subject to the applicant entering into an agreement to restrict the disposal of the workshop development and subject to the following conditions and any further conditions required by the Environment Agency:

- 1. SC 1.4A**
- 2. Prior to the commencement of the development revised details of materials and finishes shall be submitted to and approved in writing by the Local Planning Authority. The external walls and roof of the building shall be constructed not in accordance with the details shown on drawing number 1593/07 but in accordance with details approved under this condition. (Reason: RC4A)**
- 3. Prior to the commencement of the development there shall be submitted to and approved in writing by the Local Planning Authority a scheme for landscaping the site 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,**
 - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,**
 - (c) details of the hard surface areas, pavements, pedestrian areas, crossing points and steps.**

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with

Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

4. That 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; and that any trees and 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 - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

5. That in the first available planting season after the occupation of the development hereby approved or on completion of the development whichever is the sooner, a hedge of a species to be agreed with the Local Planning Authority shall be planted along the whole of the western boundary of the car park area for the workshop building and be so tended as to grow and remain at a height of 2 metres, and that any plant which may die within five years of planting shall be replaced and thereafter be properly maintained in accordance with this condition.

Reason – In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policies G2 and EN1 of the Oxfordshire Structure Plan 2016 and Policy C28 of the Adopted Cherwell Local Plan.

6. That the premises shall be used only for purposes falling within Class B1 specified in the Schedule to the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 and for no other purpose(s) whatsoever.

Reason - In order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises in accordance with Policy BE1 of the South East Plan 2009 and Policies C28 and C31 of the adopted Cherwell Local Plan.

7. SC 4.3AA (RC13BB)

8. SC 4.14AB insert 'twelve' (RC15AA)

9. Prior to the commencement of the development specification details of a turning area to be provided within the cartilage of the site to allow vehicles to enter, turn around and leave in a forward direction shall be submitted to and approved in writing by the Local Planning Authority. The turning area shall be constructed, laid out and surfaced prior to the commencement of the development and in accordance with the approved details. The turning area shall be retained for the maneuvering of motor vehicles at all times thereafter.

Reason: in the interest of highway safety and to comply with Government advice contained in PPG13: Transport.

10. Prior to the commencement of the development hereby permitted a preliminary site investigation, including a desk study and site walk over as a minimum, to identify all potential contaminative uses on site, and to inform the conceptual site model shall be 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 shall be 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan and PPS23: Planning and Pollution Control.

11. If a potential risk from contamination is identified as a result of the work carried out under condition 10, 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan and PPS23: Planning and Pollution Control.

12. If contamination is found by undertaking the work carried out under condition 11, 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan and PPS23: Planning and Pollution Control.

13. If remedial works have been identified in condition 12, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition y. A verification report (referred to in PPS23 as a validation 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 risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the

adopted Cherwell Local Plan and PPS23: Planning and Pollution Control.

14. SC 6.4AB (Reason: RC34AA)

15. SC 6.4BC (Reason: RC65AA)

16. SC 7.13 (Reason: RC50)

17. That no building shall be erected within 3 metres of the public foul sewers which cross the site.

Reason: To safeguard the existing foul water sewer and for the purposes of access and maintenance

18. No development approved by this permission shall take place until a scheme to dispose of foul drainage has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as approved. Reason: The application form indicates that foul drainage is to be discharged to a non-mains drainage system. In these circumstances DETR Circular 09/99 advises that a full and detailed consideration be given to the environmental criteria listed in Annex A of the Circular in order to justify the use of non-mains drainage facilities. In this instance no information has been submitted.

Planning Notes:

1. The applicant's attention is drawn to the recommendations set out within the Ecolocation Phase 1 Study Report dated 22nd March 2011. Particularly the requirements under points 1, 2 and 5 in relation to great crested newts, reptiles, the adjacent watercourse and nesting birds. The applicant is advised that further survey work should be carried out prior to any works commencing on site to identify any protected species resident on the site and to avoid damage or harm to protected species.
2. The applicant's attention is drawn to the attached letter from the Environment Agency dated the 18th April and the advice to applicant enclosed in that letter.

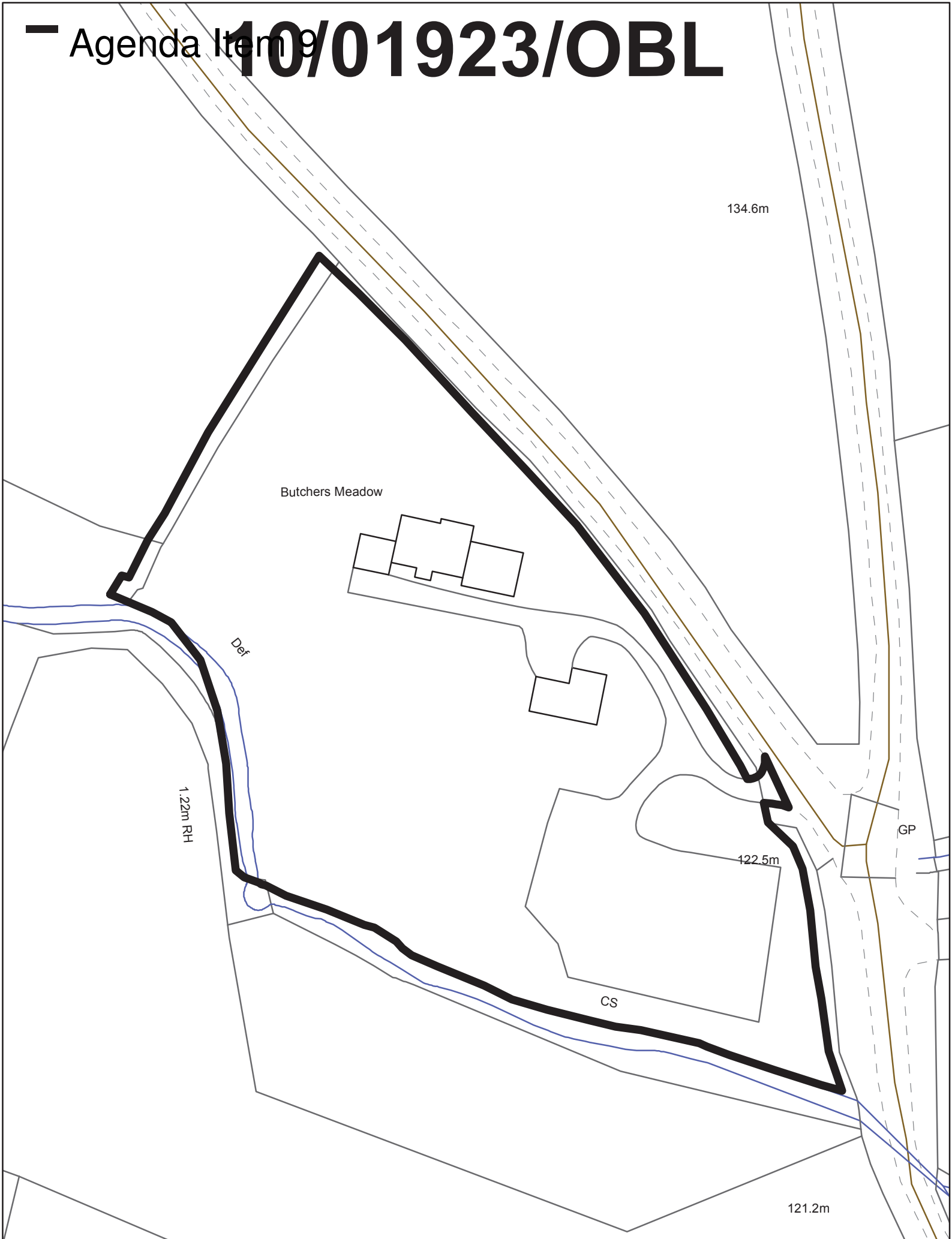
SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as the local planning authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal is located on a site which benefits from a history of commercial use and recent planning permission for workshop development on the same site, the proposed development does not adversely affect neighbouring properties, highway safety or the visual amenities of the area. As such the proposal is in accordance with policies CC6 and BE1 of the South East Plan 2009 and policies C7 and C28 of the adopted Cherwell Local Plan 1996. For the reasons given above and having regard to all other matters raised, the council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

CONTACT OFFICER: Emily Shaw

TELEPHONE NO: 01295 221822

Agenda Item 9 **10/01923/OBL**



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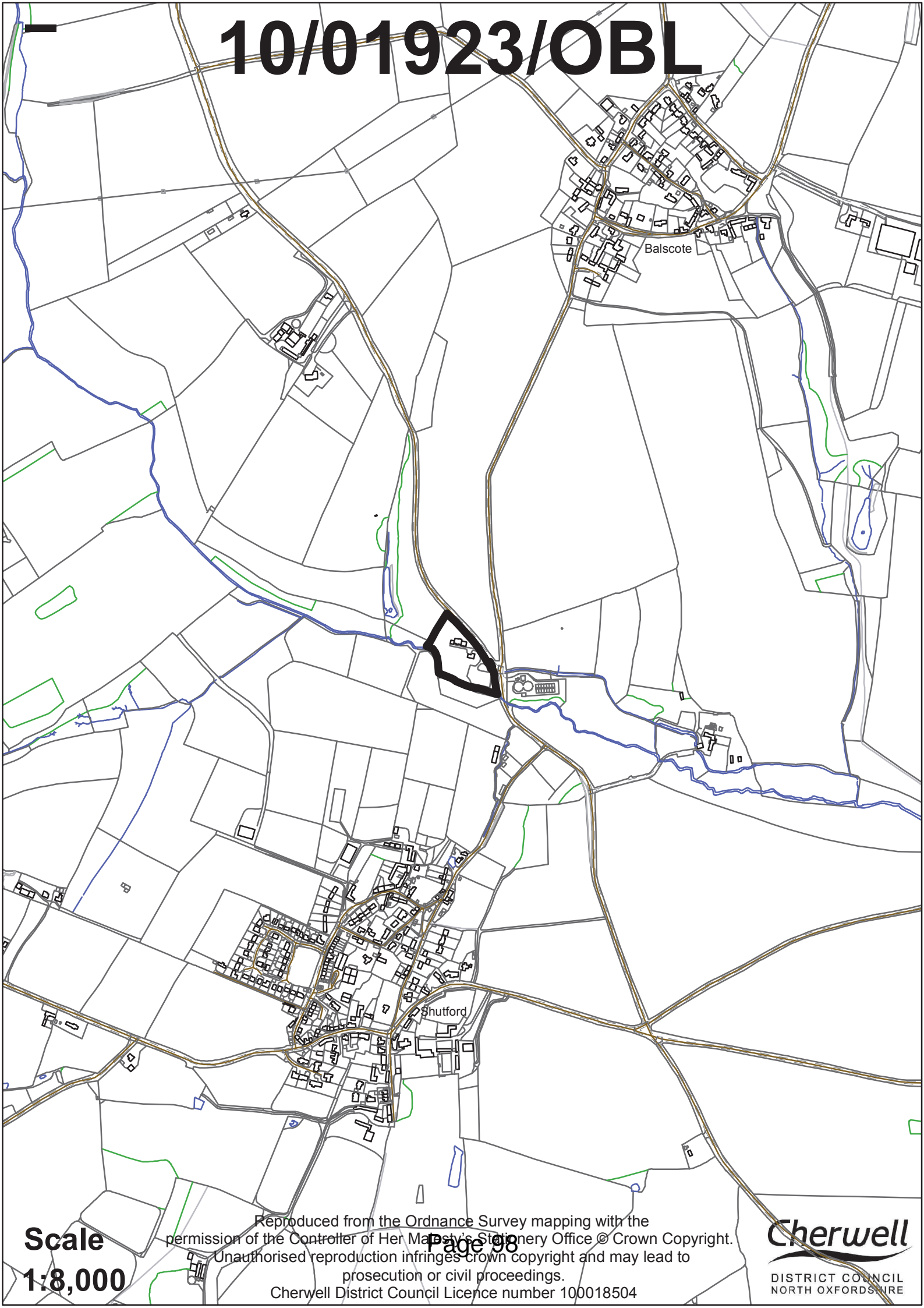
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10/01923/OBL



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Application 10/01923/OBL	No:	Ward: Wroxton	Date Valid: 12/01/11
Applicant:	Mr and Mrs M Walters, Butchers Meadow, Balscote, OX15 6EX		
Site Address:	Butchers Meadow, Balscote, Ox15 6EX		

Proposal: Application to rescind S106 agreements dated the 10th August 2001 and 12th June 2007 and to replace them with a new S106 agreement to ensure the dwelling and any future workshop development on the site are not disposed of separately.

1. Site Description and Proposal

- 1.1 The application site known as Butchers Meadow is located within an open countryside location approximately a kilometer south of the village of Balscote. Vehicle access to the site is gained to the north east of the site serving the proposed business use and the existing dwelling on the site.
- 1.2 The site has had a range of previous commercial uses spanning back to the 1960's, including haulage and storage but all evidence of these previous uses has now been cleared from the site. The site of the proposed business units is a level site currently made up of some areas of poor hardstanding and rough grassland left from previous storage and distribution uses on the site. The level of the site rises to the north and west. The site is enclosed to the east and south by dense hedge planting and to the north east by a roadside hedge. The site is defined by post and rail fencing to the north west.
- 1.3 The site also accommodates a dwelling and associated garage which are located to the north of the application site on higher ground. The dwelling is unlawfully occupied in breach of an occupancy condition seeking occupation by people associated with the business uses on the site. An application to seek to remove this condition is currently being considered by the Local Planning Authority.
- 1.4 Site constraints include being situated within an Area of High Landscape Value, sited on a classified road, within the Northern Valleys Conservation Target Area, being on potentially contaminated land (due previous uses on the site) and furthermore the application was support by a phase one habitat survey. The site does not lie within a Conservation Area and there are no listed buildings on or within close proximity of the site. The occupation of the dwelling is also in breach of clause 10(d) of the legal agreement dated 10th August 2001.
- 1.5 **Relevant Planning History**
The workshop development on the site has been previously approved under 98/01386/F and 06/01090/F which both had associated S106 agreements attached the details of which are set out below.
The dwelling on the site was approved under application number 99/01347/F subject to a term within the legal agreement associated with the application

98/01386/F for Workshop units to ensure that the dwelling was occupied only by any person or persons solely or mainly employed or last employed or mainly employed in the commercial operations carried out within the workshops to be erected on the land (ref. 98/01386/f and 06/01090/F which expired in June 2010).

1.5 This application seeks to rectify the breach of clause 10(d) of the 2001 legal agreement caused by the occupation of the dwelling by Mr and Mrs Walters. This application seeks to rescind previous S106 agreements associated with the site known as Butchers Meadow. The two agreements dated the 10th August 2001 and the 12th June 2007 contain the following terms:

- control the occupation of the dwelling known as Butchers Meadow, to persons only solely or mainly employed or last solely or mainly employed in the commercial operations carried out on the land adjacent to the said dwelling
- that the owner will not occupy the workshops to be comprised in the workshop development or brought into use until; (i) all previous commercial activities, (ii) all buildings, materials, plant machinery and vehicles have been removed from the site, (iii) the land restored to agriculture, (iv) all buildings, prefab units, mobile homes, plant, machinery and vehicles be removed;
- that the owner shall not after the cessation of the said commercial activities on the land recommence or cause to permit to be recommenced any commercial activities on the land.
- That the owner will not sell, lease or occupy or cause or permit to be sold, leased or occupied (i) the dwelling or any part of the unit of accommodation separate from the workshops or existing commercial operations (ii) the workshops or the existing commercial operations as the case may be separate from the dwelling.

The new S106 agreement which is to replace those rescinded above contains the following owners obligations:

- That in the event of the commencement of The Workshop Development not to dispose of the freehold of the Workshop Development separately from the remainder of the freehold of the land.

2. Application Publicity

2.1 The application was advertised by way of a site notice, press notice and neighbour notification letters. The final date for comment was the 17 February 2011.

2.2 No letters of representation have been received.

3. Consultations

3.1 **Wroxton Parish Council** – no objections

3.2 **CDC Head of Legal Services** – Comments raised concern about the fact that the first draft agreement did not rescind the previous agreements on the site and the owners may remain in breach of terms of previous agreements if they continued to occupy the dwelling with association to commercial uses on the site. It was advised that previous 2001 and 2007 agreement be rescinded and replaced by a new

agreement.

Comments awaited on draft agreement received on the 25th March 2011.

4. Relevant Planning Policies

- 4.1 South East Plan
CC7 – Infrastructure and implementation
- 4.2 Adopted Cherwell Local Plan
Policy EMP4 – Employment generating development in the rural areas
Policy TR7 – Development affecting traffic on minor roads
Policy C7 – Landscape conservation
Policy C9 – Scale of development compatible with a rural location
Policy C13 – Area of high landscape value
Policy C28 – Layout, design and external appearance of new development
- 4.3 Non Statutory Cherwell Local Plan
Policy EN34 – Conserve and enhance the character and appearance of the landscape
- 4.4 National planning policy
PPS1 – Delivering Sustainable Development

5. Appraisal

- 5.1 The dwelling is occupied by Mr and Mrs M Walters who are currently occupying the dwelling in breach of clause 10(d) of the legal agreement dated the 10th August 2001, due to the fact that there is no longer any commercial use on the adjacent land and no workshop development has come forward. The site was cleared of all its previous commercial uses approximately 4 years ago and the dwelling has therefore been occupied by Mr and Mrs Walters since then and for this four year period in breach of the legal agreement.
- 5.2 It is my view that due to there being no existing commercial uses on the site and with no workshop development having come forward, much of the previous S106 agreement clauses are out of date. The site has been cleared off all previous uses which meets certain clauses of the agreement however it means that clause 10(d) is impossible to comply with within the current circumstances as no workshop development has come forward. The dwelling has been occupied for 4 years in an unrestricted way without detrimental harm to the visual amenities of the area, highway safety and no harm to neighbouring properties.
- 5.3 The new agreement seeks to ensure that in the event of the commencement of the workshop development the owners shall not dispose of the freehold of the workshop development separately from the remainder of the freehold of the land. The new agreement is required to protect the amenity of occupiers of the adjacent dwelling. If the workshop development was to come forward and there was no restriction on the disposal of the dwelling and the workshop freehold then unrelated occupiers of the dwelling could be adversely affected by the workshop uses and this could lead to future problems with adverse impact on unrelated occupiers from noise and

disturbance.

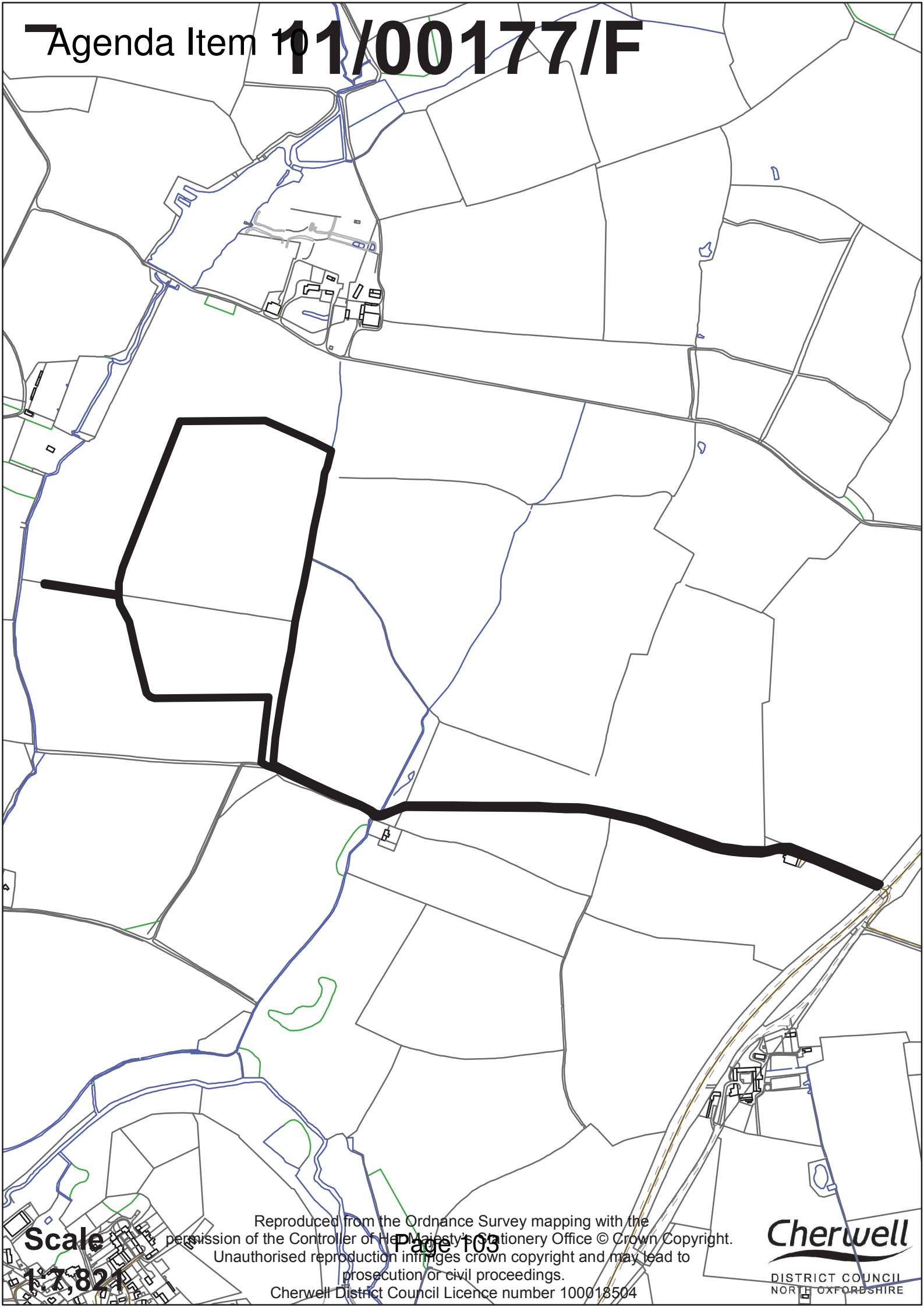
6. Recommendation

- (1) to rescind legal agreements dated the 10th August 2001 and 12th June 2007**
- (2) replace them with a new agreement with the following owners obligations:
That in the event of the commencement of The Workshop Development not to dispose of the freehold of the Workshop Development separately from the remainder of the freehold of the land.**

CONTACT OFFICER: Emily Shaw

TELEPHONE NO: 01295 221822

Agenda Item 11/00177/F



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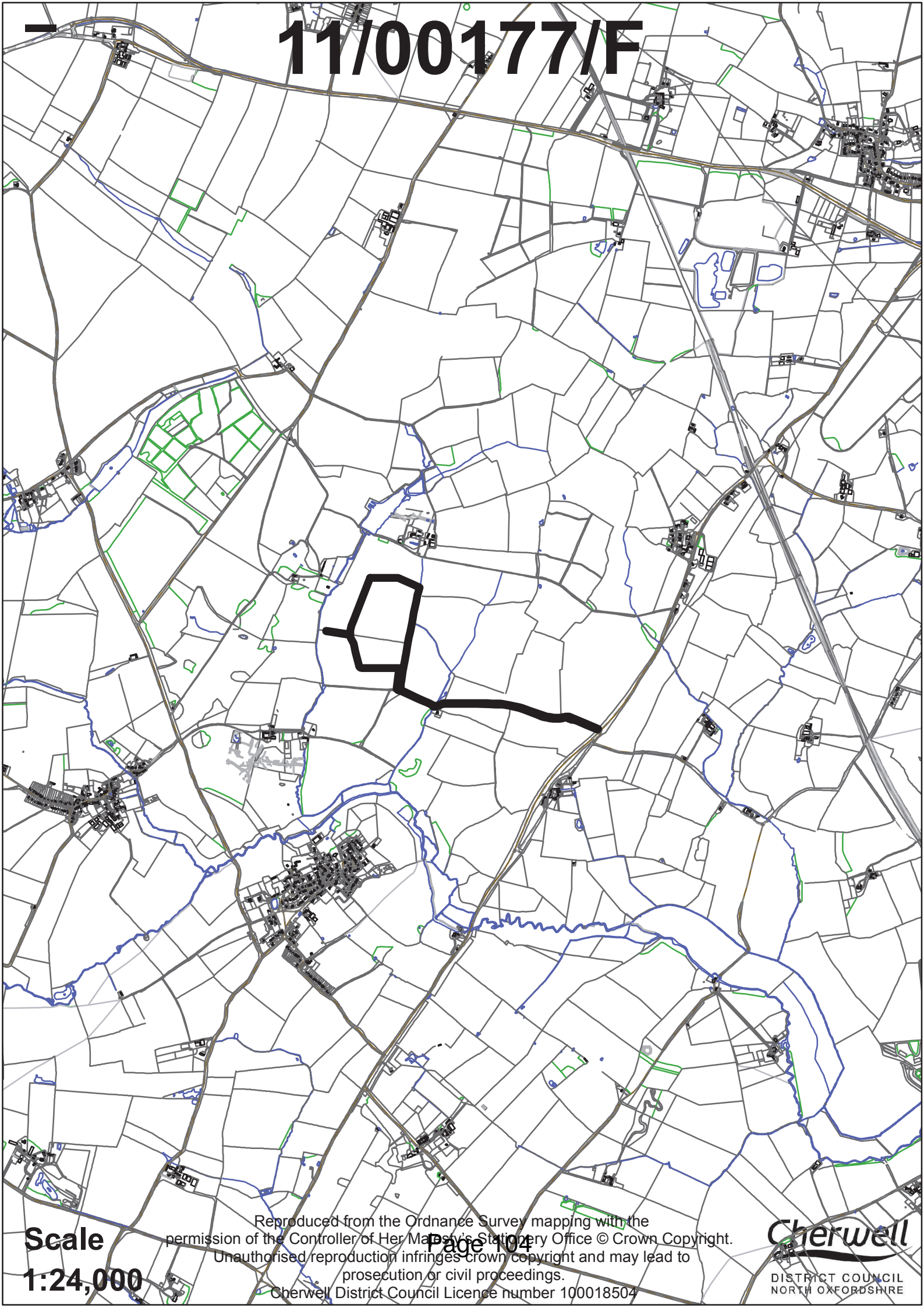
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Cherwell

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11/00177/F



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Application 11/00177/F	No:	Ward: Fringford	Date 07/02/2011	Valid:
Applicant:	Alectron Investments Ltd			
Site Address:	Land north of Fringford, west of A4421, Shelswell Park, Fringford			

Proposal: Continued use as agricultural land and new solar farm of up to 5MW of generating capacity, comprising the installation of solar photovoltaic panels and associated infrastructure including electrical inverter and transformer cabinets, switchgear and meter housing, access track, fencing, security cameras and landscaping on land

1. Site Description and Proposal

- 1.1 The proposal is for a solar farm development that could generate up to 5MW of power located on the Shelswell Park Estate to the north of Fringford and to the west of the A4421. The site area is 15.4 hectares and is over 1km away from the A4421 and similar distances away from other highways. The land is made up of grade 2 agricultural land and currently used for arable purposes. The site is bounded by a small area of woodland, hedgerows and fences and a farm track. The site gently slopes from north to south and falls away more steeply along the western boundary.
- 1.2 The site is to be accessed from the A4421 along an existing track to the south east of the site. This track is a Restricted Byway and runs past Warins Barn.
- 1.3 Home Farm, a listed property, is located to the north of the site, Shelswell Park is to the west of the site and Willaston Farm, also listed, is located to the south west. A public bridleway runs to the north of the site and public footpaths run to the south of the site. The site is within an area of High Landscape Value.
- 1.4 The proposal includes the installation of fixed ground mounted photovoltaic panels which will be secured to the ground by shallow piles. The panels will be mounted on frames of up to 3.5 metres in height, which will be angled at approximately 30 degrees and orientated south. Each 3.5 metre high frame will hold 3 panels but they will be no higher than the frame. The panels are proposed to be dark grey/black in colour and have a matt finish. The intention is that the land below the photovoltaic arrays will continue to be used for agricultural purposes, not for arable purposes but instead for the grazing of sheep.
- 1.5 Also proposed as part of the development are five cabins containing inverter and transformer units, cabins containing switchgear and meter units to connect to the electrical grid, stock proof post and wire fencing along the site boundary, security palisade fence and gates around the inverter and transformer cabins, the switchgear and meter housing cabins, security CCTV and an intruder detection system.

- 1.6 A series of cables will be run underground, connecting the inverter and transformer units to the switchgear and meter housing, which will then enable an underground connection to the grid.

2. Application Publicity

- 2.1 The application was advertised by way of a site notices and press notice. The final date for comment was 14 April 2011.

- 2.2 10 letters/emails of representation have been received from third parties which are summarised below, 4 of which were submitted by or on behalf of the tenant farmer , but these objections have now been withdrawn (see electronic application file for full comments):

2.2.1 Material Considerations

- Productive agricultural land should not be used for renewable energy generation
- Focus for this form of development should be on brown field sites and industrial areas
- Applications for large scale solar farms should be put in abeyance until review on feed in tariff is concluded
- Will result in change of use of land
- Not possible to manage land for arable purposes
- If approved should be conditioned that land returned to original condition – funds should be secured
- Will result in the tenant farmer losing productive land within his tenancy – affecting production and livelihood, a reason for refusal on previous change of use applications for this landowner (tenant now withdrawn this objection)
- Difficult to farm the land surrounding the solar farm reducing its productivity
- Security measures are not compatible with continued use of land for agricultural purposes
- Noise from transformers affecting tranquillity of Willaston
- Visual impact, and impact on privacy as a result of security cameras and their masts
- Large scale proposal not in keeping with Council's vision (Core Strategy Issues and Options Paper – Feb 2006)
- Detrimental to Area of High Landscape Value
- Adverse impact on Listed Buildings – Home Farm House
- Adverse impact on medieval village of Shelswell, the setting of a site of archaeological significance
- Adverse impact on residential amenities – glint from sun reflecting off panels
- Impact of amenity of those using public footpaths and bridleways
- Access and junctions unsuitable to serve the site
- Increase in traffic up driveway belonging to Willaston, a restricted byway. Not confident that signs and planning conditions will prevent this therefore damage to privately maintained access.
- Plant, insect and animal species have not been properly assessed
- Some birds may mistake the panels for an area of water
- No explanation of short term effect.
-

2.2.2 **Non-material Considerations**

- Proposal will not generate enough electricity to justify the disruption caused
- Effect on outlook from private properties
- Area already has to put up with disruptive processes such as quarrying and waste disposal
- Applicants have no experience in building such schemes
- Council should appoint independent advice with regard to the viability and balance the sustainability of this or similar applications
- Application does not include sufficient information with regard to costs of cabling to Cottisford sub station, details of leakage and energy loss, details of safety measures to prevent damage by agricultural operations and potential electrocution of livestock
- Shelswell Estate will be the only ones to benefit
- No comparable schemes to look at and assess
- Inaccuracies in the selected viewpoints and the details of rights of way

3. Consultations

- 3.1 A summary of the consultation responses is set out below (see electronic file for full details)
- 3.2 **South Northamptonshire Council** states that in principle there appears to be no issues raised by the proposal which would impact significantly on SNC and therefore the Council would raise no objections but recommends the Council determine the application in accordance with national guidance, in particular PPS 22 – Renewable Energy, and the local planning policies.
- 3.3 **Hethe Parish Council** objects to the proposal and states that;
- Brown field sites should be explored before using prime agricultural land
 - The panels will be visible from public rights of way and they will be at odds with rural land
 - Security systems unsuitable for rural location
 - Insufficient consultation with the Parish
 - No mention of what happens to electricity once generated, underground cables are expensive and pylons have significant visual impact
 - Little assessment of wildlife impact
 - Local walkers will feel overlooked by security cameras
- 3.4 **Newton Purcell with Shelswell Parish Council** objects to the application stating that there are mixed feelings within the village but some of the reasons for objecting are set out. The reasons for objecting are covered in the comments set out in para. 2.2 above.
- 3.5 **Hardwick with Tusmore Parish Meeting** raises no objections.
- 3.6 **Godington Parish Meeting** originally raised no objections but suggested that a sudden increase in flow of flood water in the river could cause damage to properties in Godington. Having been reconsulted the Meeting objected for similar reasons.
- 3.7 **Cottisford Parish Council** objects to the proposal but provides no reasons for

reaching this view.

- 3.8 **Stoke Lyne Parish Council** objects to the application as the development is proposed on good agricultural land. The site is rural and solar panels do not belong in rural environments.
- 3.9 The Council's **Head of Planning Policy** has set out the relevant policy but identifies a conflict between the policies which support renewable energy and those that resist the loss of high grade agricultural land.
- 3.10 The **Local Highway Authority** has determined that the access is acceptable but only with restrictions and appropriate measures to protect users of the right of way. Alterations should be made to the Restricted Byway to allow for HGVs to pass. No objections are raised subject to the inclusion of planning conditions.
- 3.11 The Council's **Landscape Officer** considers the site has been well chosen as it only has very localised impact. The surrounding area although gently undulating is not overlooked from any high points in the vicinity and is visually well contained. There will be very little if any visibility from surrounding villages. Public access is restricted to a couple of rural lanes from which there will be limited visibility and a number of public rights of way which pass close to the site from which there will be considerable visibility. There are some concerns about the considerable area to be covered in an Area of High Landscape Value but this itself is not a reason for refusal. No significant objections are made in relation to landscape and visual impact grounds.
- 3.12 The Council's **Conservation Officer** has stated that the views are more prominent from Shelswell House than Willaston Farm. It was difficult to ascertain the degree of disruption as there is no measure of reflectability of the cells or their intrusion into the landscape due to their physical dimensions. On the whole it is not thought that the application will unduly harm the setting of listed buildings.
- 3.13 The Council's **Rural Development and Countryside Manager** raises no objections but states that the applicants should seek the necessary consent from OCC regarding access along the public right of way.
- 3.14 The County's **Rights of Way Field Officer** has raised particular concern over the conflict between the use of the Restricted Byway by horses and HGVs. However these concerns and the mechanisms for dealing with them are reflected in the Highway Authority comments and suggested conditions.
- 3.15 **Natural England** has no specific comments to make but sets out that the District should have regard for Local Wildlife Sites, Protected Species, Landscape and biodiversity enhancements.
- 3.16 The Council's **Ecologist** does not foresee any major ecological issues. The phase 1 habitat survey report is sufficient in scope and depth. If the enhancements for biodiversity are carried out as outlined in the Phase 1 report there is potential for a net gain for biodiversity on site. Conditions are proposed.
- 3.17 The **County Ecologists** supports the comments made by CDC's ecologist and

landscape officer and adds that the newly planted hedgerows and scrub and the management of the existing hedgerows should help meet the aims of the Tusmore and Shelswell Conservation Target Area by linking woodland sites. The creation of calcareous grassland will also help meet UK BAP priority habitat creation targets for Oxfordshire.

- 3.18 The Council's **Arboriculturalist** recognises that the scheme has been laid out to take account of the trees on site with the inclusion of a 20m buffer zone. This reduces the risks of the more common short term issues that may arise.
- 3.19 The Council's **Head of Anti-Social Behaviour** acknowledges that the submission recognises that the inverter and transformer equipment will generate some noise and they go on to state that the enclosures are designed to limit the noise impact at the nearest noise sensitive locations. A condition is recommended.
- 3.20 The County Council **as Strategic Planning Authority** has stated that environment and climate change is both a County Council priority and an objective in Oxfordshire 2030 therefore the principle of the development is supported.
- 3.21 The County **Archaeologist** acknowledges that the site lies within an area of some archaeological interest however the impact of the solar arrays is likely to be fairly minimal but impacts from laying transformers and cabling may have greater impact therefore conditions are suggested.
- 3.22 **The Environment Agency** has not yet commented on the application.

4. Relevant Planning Policies

- 4.1 Central Government Guidance
Planning Policy Statement (PPS) 1 – Delivering Sustainable Development (2005) and its supplement (2007)
Planning Policy Statement (PPS) 5 – Planning for the Historic Environment (2010)
Planning Policy Statement (PPS) 7 – Sustainable development in rural areas (2004)
Planning Policy Statement (PPS) 9 – Biodiversity and Geological Conservation (2005)
Planning Policy Guidance (PPG) 13 – Transport (2011)
Planning Policy Statement (PPS) 22 – Renewable Energy (2004) and its companion guide (2004)
- 4.2 South East Plan Policies
CC1 – Sustainable development
CC2 – Climate change, help reduce emissions
CC3 – Resource use
NRM13 – Regional renewable energy targets
NRM14 – Sub regional targets for land based renewable energy
NRM15 – Location of renewable energy development
NRM16 – Renewable energy development criteria
C4 – Landscape and countryside management
BE6 - Management of the Historic Environment

4.3 Adopted Cherwell Local Plan

C1 – Nature Conservation

C7 – Topography and character of the landscape

C8 – Sporadic development in the open countryside

C9 – Development compatible with rural location

C13 – Areas of High Landscape Value – seek to conserve and enhance the environment

C14 – Retention of trees and hedgerows

C28 – Standards of layout, design and external appearance

ENV1 – Detrimental levels of noise...or other types of environmental pollution

4.4 Non Statutory Cherwell Local Plan

EN16 – Development of greenfield land including the most versatile (grades 1, 2 and 3a) agricultural land

EN21 – Proposals for renewable energy schemes

EN22 – Nature Conservation

EN23 – Ecological surveys

EN24 – Protection of sites and species

EN30 – Sporadic development in the open countryside

EN34 – Conserve and enhance character and appearance of landscape

EN35 – Retention of woodlands, trees, hedges etc

EN36 – Enhancement of the character and appearance of the landscape

EN37 – Retention of trees and hedgerows

EN39 – Preserve setting of listed buildings

EN44 – Setting of listed buildings

EMP7 – Farm Diversification

TR5 – Road safety

TR16 – Development generating frequent heavy goods vehicles

R4 – Rights of way and access to the countryside

5. Appraisal

5.1 Main Planning Considerations

5.1.1 The main issues to consider in the determination of this application are as follows –

- Principle of solar farms in rural locations
- Feed In Tariff
- Grade of agricultural land
- Layout and Design
- Visual Amenity/Landscape Impact
- Residential Amenity
- Setting of Listed Building
- Highway Impact/Rights of Way
- Trees
- Ecology
- Drainage
- Archaeology
- Tenancy of land
- Response to third party representations

Each of the above points will be considered in turn.

5.2 Principle of solar farms in rural locations

5.2.1 Solar panels are commonly used in the UK on a small scale and predominantly on buildings or in urban areas. However, large scale solar farms are a common sight in some European countries and in the last couple of years applications for similar schemes have become more common in the UK, particularly in southern parts of England, where the resource is greater. Despite a number of applications for solar farms being approved in some parts of the UK, particularly Cornwall, it is understood that there is not yet an operational solar farm within the UK.

5.2.2 National, regional and emerging local planning policy strongly supports and encourages the development of renewable forms of energy providing that it does not conflict with other policies. However where conflict does arise significant weight must be given to the need for renewable energy. The Companion Guide to PPS22 deals with specific forms of renewable energy but does not refer to large scale solar farms. This is likely to be because at the time of publishing the document in 2004 solar farms had not been considered. Despite this lack of specific reference it is still possible to assess the proposal based on other principles and policies. It is therefore considered that the proposal should be assessed against those matters listed above in section 5.1.1.

5.3 Feed In Tariff

5.3.1 The Feed in Tariff essentially provides developers with a financial subsidy towards the provision of solar photovoltaics and is index linked and guaranteed for 25 years and applies to solar facilities of up to 5MW. The tariff system is currently under review and there is potential for the system to change such that large scale proposals will not benefit from the same level of subsidy. Some objectors have suggested that the scheme should be put on hold until the review has been concluded. However the application is before the Council and it is our duty to determine it within a reasonable time. Proposals considered at this time still have the potential to benefit from the existing level of subsidy and the applicants have stated that they are committed to delivering the Solar Farm at Shelswell Park. The Feed In Tariff website (www.fitariffs.co.uk) provides additional information about the timing of the review and the implications of the certain outcomes.

5.3.2 Whilst the Feed in Tariff does not directly influence the assessment of the application it is beneficial to have a basic understanding of how the Feed in Tariff currently operates. It is likely that the Feed in Tariff has influenced the proposed scale of this and other schemes (outside of Cherwell District) for solar farms.

5.4 Grade of agricultural land

5.4.1 The site consists of grade 2 agricultural land. This is one of the higher quality grades. Policy EN16 of the Non-Statutory Cherwell Local Plan resists development on the most versatile agricultural land unless there is an overriding need for the development and opportunities have been assessed to accommodate the development on previously developed sites and land within the built up limits of

settlements. It goes on to state that if development needs to take place on agricultural land, then the use of the land in grades 3b, 4 and 5 should be used in preference to higher quality land except where other sustainability considerations suggest otherwise. This reflects guidance in PPS7 which states that the quality of agricultural land should be taken into consideration when determining planning applications. Where significant development of agricultural land is unavoidable, local planning authorities should seek to use areas of poorer quality land, except where this would be inconsistent with other sustainability considerations.

- 5.4.2 There is concern that the proposal does remove high grade agricultural land from arable production and in response to this the agent has provided the following response.
- 5.4.3 In line with Non Statutory Local Plan policy EMP7 the solar farm would not result in the permanent loss of high quality agricultural land.

The use of the site as a solar farm would be for a limited period of 25 years and would not sterilise the site for use as high quality agricultural land. The site can be restored once the use as a solar farm has ceased, which can be secured through a suitable condition.

Although the site may not be used for arable farming during the 25 years period there will not be a 'loss' of agricultural activity at the site as the provision of semi improved grassland between the PV arrays will enable the land to be grazed by sheep.

Indeed, the proposal ensures that agricultural activity will continue at the site when otherwise there would have been no certainty that the land would have been farmed for the next 25 years.

The policy officer states, "*The proposal presents an apparent conflict with these policies by resulting in the loss of productivity on high quality agricultural land for a 25 year period.*" Although the site would be used for sheep grazing, for 25 years, rather than arable farming we do not consider that this represents a loss in 'productivity'. Indeed policy EMP7 is concerned with the loss of land rather than issues of productivity.

Site selection and renewable energy policy

There is considerable local and national policy support for development that contributes to renewable energy generation and carbon emissions reductions.

Within the wider context of national policy, the supplement to PPS 1, Planning and Climate Change (2007), confirms that it is not appropriate to apply the sequential test to renewable energy proposals:

"As most renewable energy resources can only be developed where the resource exists and where economically feasible, local planning authorities should not use a sequential approach in the consideration of renewable energy projects (for example giving priority to the re-use of previously developed land for renewable technology developments)."

[This reference is from PPS22, not PPS1]

Further to this PPS1 states that when considering planning applications for

renewable energy developments local planning authorities should not require applicants to:

“demonstrate either the overall need for renewable energy and its distribution, nor question the energy justification for why a proposal for such a development must be sited in a particular location” (paragraph 20). [Supplement to PPS1]

Despite this provision in national policy, Non Statutory Cherwell Local Plan Policy EN16 requires a demonstration as to why this site has been selected and other sites of non-agricultural land or low quality agricultural land have not been considered.

The site was selected following a search of *available* and *suitable* sites. The site was considered available as a landowner was identified who is seeking to diversify agricultural activity. This provided an opportunity for the Shelswell Estate to help ensure its continued prosperity and management of the estate, including the proposal site.

Paragraph 2.9 of the Planning Design and Access Statement identifies the reasons why this site in particular was selected ahead of other potential sites in the estate and outlines its *suitability*, as summarised below:

- Relatively flat topography and southern aspect
- High levels of solar irradiation
- Close proximity to the national grid
- Being free from ecological designations
- Existing access to the site
- No public rights of way in the area of the solar farm
- Stable land not subject to flooding
- No significant landscape impacts (The landscape and visual appraisal explains how the positioning of the PV cells has been selected to reduce visual impacts and aid screening where possible, and overall there will be limited visual impacts particularly after new screening has sufficiently developed.)

The site is also ideally located with some residential presence in the vicinity for security, yet not visible from a main road, which would raise security concerns. Many previously developed sites are not appropriate for solar farms. For example, sites within urban areas, within villages or adjacent to settlements are not appropriate for security reasons, potential impact on residential amenity, and high visibility.

- 5.4.4 Whilst the proposal does not comply with Policy EN16 of the Non Statutory Cherwell Local Plan and PPS7, based on the above information and the fact that the site could be taken out of arable production and used for grazing at any time without the Council’s involvement it is not considered that the use of grade 2 agricultural land for this purpose is a robust reason to recommend the application for refusal. Furthermore PPS22 requires that proposals for renewable energy should be given significant weight due to their wider environmental benefits.

5.5 Layout/Design

- 5.5.1 The solar panel details plan shows that the rows of solar arrays will be positioned

with 7.7m spacing across the site, arranged to avoid shading from one another, surrounding trees and hedges.

- 5.5.2 The five inverter transformer unit cabins are to be located around the edge of the site and are pre-fabricated flat roof structures measuring approximately 7.5 metres by 3 metres by 2.5 metres high and are proposed to be dark grey in colour. Two additional cabins are required for the switchgear and a further cabin for the metering equipment. These will be of a slightly smaller scale but of a similar design and all located close to the access track and one of the other transformer cabins. Whilst indicative plans have been provided it is possible to condition that final details are submitted for approval.
- 5.5.3 Standard stock fencing is proposed for the boundary of the solar farm. This will prevent animal intrusion and deter trespassers and also contain grazing sheep. This is proposed to be 1.1 metres high. Palisade fencing is proposed where there is equipment which requires additional security. This is proposed to be 2.4 metres in height (shorter than the height of the panels). CCTV and an Intruder Detection System will be installed around the site perimeter. The CCTV system will consist of eight cameras and poles proposed to be 4.5m high.
- 5.5.4 Along the eastern boundary the existing hedgerow is to be retained and several metres within this boundary will be the stock fence and access track. Along the north and western boundaries a new hedgerow will lie within the boundary created by the stock fence. On the southern boundary a new section of scrub habitat is provided outside of the boundary created by the stock fence. All proposed hedgerows are shown to be retained at a height of 3.5 to 4 metres in height. This is higher than the proposed panels so once at full height will obscure most close views of the site.
- 5.5.5 The application is not seeking a temporary consent but the life span of the panels is thought to be up to 25 years and the way in which the proposal has been designed means that once the solar farm is decommissioned all the equipment can be easily removed from site with no long term damage to the character and appearance of the countryside.
- 5.5.6 This form of development is considered to be sporadic development in the open countryside, therefore when considered against policy C8 should be unacceptable. However the impact of the design and layout and the balance of considerations is discussed in the following sections.

5.6 Visual Amenity/Landscape Impact

- 5.6.1 Solar panels are a relatively modern technology and their intervention into the open countryside is at odds with the character of the landscape and therefore potentially contrary to Policy C7 of the adopted Cherwell Local Plan which discourages development if it would harm the topography and character of the landscape. The applicants have advised that their submission and assessment is based on the frames and the panels being a maximum of 3.5 metres high. However this is the worst case scenario and the exact specification of the panels would be agreed by conditions and could be lower than set out in the submission.

- 5.6.2 The application has been supported by a Landscape and Visual Appraisal. The report states that the site is only visible from locations in the immediate local area and that it is not significantly perceptible beyond 1km distance except for potential views of the hedgerow trees. This is an opinion which is supported by the planning and landscape officers following sites visits the site and surrounding area. The solar farm will not be invisible but the areas from which the most prominent views will be gained are Shelswell Park and public rights of way to the west, the track that links the A4421 and Home Farm and a footpath to the north east, the unrestricted byway from the A4421 and Home Farm. The layout of the solar farm has been designed to restrict the development to less visible parts of the available land, avoiding the western and south western parts of the site. Existing hedgerows are being retained and encouraged to grow from 2-2.5 metres up to 3-3.5 metres in height to assist with the screening of the site.
- 5.6.3 Paragraph 15 of PPS22 deals with Local Designations and states that such designations should not be used in themselves to refuse planning permission for renewable energy developments. Planning applications for renewable energy developments in such areas should be assessed against criteria based policies set out in local development documents. The visual impacts will be very localised, not extending much beyond 1km from the site. The site is within an Area of High Landscape Value where the environment should be conserved or enhanced (Policy C13 of the adopted Cherwell Local Plan). It could be argued that given the localised impact and proposed mitigation the environment will be conserved.
- 5.6.4 Policy C9 of the adopted Cherwell Local Plan deals with development in rural areas and states that beyond the existing and planned limits of the towns of Banbury and Bicester development of a type, size or scale that is incompatible with a rural location will normally be resisted. It could be argued that a solar farm is incompatible with the rural location therefore the policy is not complied with. However, the supporting text for this policy sets out that the intention should be to limit the level of development outside of the towns to protect the environment, character and agricultural resources of the rural areas. Through the above assessment it is considered that the development does not compromise the environment or wider character of the rural area and section 5.4 deals with the impact on the agricultural resource. The same conclusion can be reached with regard to Policy C7 that as a result of the localised impacts the wider character of the landscape is not harmed.
- 5.6.5 The construction and nature of the solar panels is such that once they cease generation they can be removed and the land restored to its original state. Therefore the long term impact on the character of the landscape and open countryside is limited as they are not an irreversible form of development.
- 5.6.6 The proposal is considered to comply with Policy C13 and C28 of the adopted Cherwell Local Plan.
- 5.7 Residential Amenity
- 5.7.1 One of the concerns raised by contributors is the effect of glint and glare. The application documentation has provided the following explanation;

“Glint is caused by the direct reflection of sunlight on a reflective surface, whereas glare is a less intense reflection of a bright diffuse light around the sun. The concept of the solar panel is designed specifically to absorb light and to reduce the amount of reflected light. Combined with the landscape strategy to mitigate the visual impact in the landscape, glint and glare from the solar farm are unlikely to cause any significant nuisance.”

- 5.7.2 The solar panels are proposed to be matt in finish, thus reducing the potential for glint and glare. Furthermore the panels will be orientated south thus not affecting properties to the north (Home Farm) and views into the site from the residential dwelling at Willaston and its associated cottage are restricted by the topography of the site and intervening vegetation and also largely limited to first floor rooms.
- 5.7.3 In relation to noise there will be some noise as a result of the construction phase of the development but this is likely to be restricted to specific hours to avoid adverse noise to nearby residential properties. During operation the panels themselves will not make a noise but the transformers will generate some noise. However these will be housed so as to limit the noise impact at the nearest residential receptor in accordance with BS 4142. BS 4142:1997 is the approved method for *rating* industrial noise affecting mixed residential and industrial areas and is the best tool for setting noise targets. It compares the noise level produced by a given activity with the background sound pressure level with the noise absent. Where the activity noise contains tonal or other distinct characteristics a correction or penalty is added to the measured noise level. This process produces the 'rated level' of noise. To ensure that noise from a given activity does not give rise to complaints means that, in a planning condition, specifying that the *rated* level of noise does not exceed background. Based on this requirement to meet recommended standards the proposal is considered to comply with Policy ENV1 of the adopted Cherwell Local Plan.
- 5.8 Setting of Listed Building
- 5.8.1 Home Farm House is approximately 175 metres from the solar arrays. Despite this distance the solar panels, without screening, would be clearly visible from this property and they would be located in line with the front elevation. However a new hedgerow is proposed along the northern and western boundary of the site. This will be between 3.5 and 4 metres in height. The northern hedgerow will provide some screening from Home Farm and help to limit the impact of the solar farm on its setting. The setting of the listed property is difficult to define given the agricultural nature and its relationship with the surrounding fields but with the exception of from the bridleway between Home Farm and the proposed site it will be difficult to see the solar arrays in the setting of Home Farm from public vantage points.
- 5.8.2 In relation to Willaston the layout of the scheme avoids the closest western slopes of the field to limit the effect on its setting. There may be limited views from Willaston to the solar farm and vice versa but similarly to the above relationship it is unlikely that the solar farm will be viewed as part of the setting of Willaston from public vantage points.
- 5.8.3 There are other listed properties in the area but these are a greater distance away

from the site than the two referred to above. It is therefore not considered that other listed buildings will be affected by the proposals.

5.8.4 Policy HE1.3 of PPS5 states that where conflict between climate change objectives and the conservation of heritage assets is unavoidable, the public benefit of mitigating the effects of climate change should be weighed against any harm to the significance of heritage assets. However in this instance it is not considered necessary to apply weight to climate change as the effects on the heritage assets is not considered to be significant. The proposal is therefore considered to comply with guidance contained in PPS5, Policy BE6 of the South East Plan and policies EN34 and EN44 of the Non-Statutory Cherwell Local Plan.

5.9 Highway Impact/Rights of Way

5.9.1 Access to the site is proposed along an existing right of access that the landowner already benefits from. The surface of the access track will require some improvements but this will be of an unbound nature due to the small number of proposed traffic movements. The access route is a Restricted Byway. The Countryside Rights of Way Act states that Restricted Byways are subject to any existing conditions or limitations, and further that an owner or lessee of premises adjoining or adjacent to a relevant highway shall have a right of way for vehicular traffic over the highway. The applicants solicitors have advised that the legislation does not prevent a landowner granting a private right of way over its land which can be exercised outside of (and independently from) any public rights that may also subject the land. Thus while the land may be classified as Restricted Byway under the Countryside and Rights of Way Act 2000 it does not prevent the owner of that land or any person expressly authorised by them exercising private rights over the land in such a manner as the parties may agree.

5.9.2 The access is already used by vehicular traffic but the flow is low. The construction phase is expected to last 14-18 weeks and during this period it is thought that there will be a maximum of 12 HGV deliveries and 10 cars/LGVs are expected on site each day. Vehicular movements along the access will be managed. During the operation phase of the solar farm there will only be periodic maintenance visits by service engineers.

5.9.3 The Local Highway Authority considers that subject to the access junction being improved and alterations to the condition of the track and restrictions of the hours of access the proposal is considered to be acceptable in terms of highway safety as it is unlikely to give rise to any adverse highway safety issues.

5.9.4 The County Council's Rights of Way Field Officer has requested that within the required Construction Traffic Management Plan measures are set out to ensure that heavy goods vehicles do not leave the site until any horses have passed along the Byway away from the site and on the occasions that vehicles do meet horses the vehicles stop and turn off their engines until the horse has passed.

5.9.5 Based on the above considerations the proposal is considered to comply with guidance within PPG13, Policy TR%, TR16 and R4 of the Non-Statutory Cherwell Local Plan.

5.10 Trees

5.10.1 The site is predominantly arable farmland. However a hedgerow with trees represents the eastern boundary, a further hedgerow crosses the site and one isolated tree is in the north eastern corner of the site. With the exception of the removal of a small section of hedgerow for the access all other hedgerows and trees remain in situ and have been considered in the layout of the scheme. Therefore there is no adverse impact on existing trees and the proposal complies with policy C14 of the adopted Cherwell Local plan and EN35 and EN37 of the Non-Statutory Cherwell Local Plan.

5.11 Ecology

5.11.1 The proposal sets out that semi-improved grassland margins will be retained and improved, additional planting will take place and biodiversity will be improved through the provision of species rich grassland. A number of features within the site are considered to have potential as habitats for protected and notable species. The mature oak trees are considered to have potential for roosting bats and as a habitat for breeding birds. The existing hedgerows are also identified as being a potential habitat for breeding birds. However the proposals will not affect the mature trees and only involve the removal of a short section of hedgerow and it is therefore not considered that they will have an unacceptable impact upon local ecology.

5.11.2 Natural England and the county and district ecologists are satisfied with the assessment of potential impact and proposed mitigation. Conditions will require specific measures to be complied with. The proposal is considered to comply with guidance contained within PPS9 and policies EN22, EN23 and EN24 of the Non-Statutory Cherwell Local Plan.

5.12 Drainage and flooding

5.12.1 The site lies within flood zone 1, the zone least at risk of flooding. However due to the size of the site area a Flood Risk Assessment (FRA) has been submitted. The FRA concluded that due to the existing nature of the site, and the limited impact of the proposals on existing ground conditions, the site will not significantly affect surface water drainage, or increase the risk of flooding. Surface water drainage systems will be installed for the equipment cabins. However a response from the Environment Agency is awaited.

5.13 Archaeology

5.13.1 The site itself is not identified as being known for its archaeological interest. However sites in the vicinity are of interest. The proposal, due to its nature, is not expected to have an adverse impact on archaeological features and the County Archaeologist has not raised any objections but has requested the inclusion of conditions requiring a Scheme of Investigation. In respect of archaeology the proposal complies with guidance within PPS5.

5.14 Tenancy

5.14.1 At an early stage in the application process a lengthy letter was received from Carter Jonas on behalf of the tenant farmer of the land included in the application site. This raised a number of concerns, the main concern being the loss of land from the tenancy and the subsequent potential effect on his livelihood. However this letter has now been withdrawn as the tenant, in the event of an approval and implementation will be compensated for the loss of the land through the inclusion of alternative land within the tenancy. This is therefore not now a relevant consideration.

5.15 Response to Third Party Representations

5.15.1 A number of consultation responses expressed concern that the proposal will not be viable and would not be capable of producing the output suggested. However PPS22 in its key principles states that local planning authorities should not make assumptions about the technical and commercial feasibility of renewable energy projects.

5.15.2 Concerns were raised about the level of security proposed and the implications of using security cameras to monitor the site. Some considered that the use of cameras would result in members of the public who utilise the public rights of way feeling they were being observed. However the plans that indicate the coverage area for the cameras shows that they each could cover a distance of approximately 110 metres through 360 degrees. It is unlikely therefore that any section of the public right of way will be covered by the CCTV cameras.

5.15.3 The residents of Willaston have expressed concern that in the event of the scheme being approved and implemented some construction and maintenance traffic will attempt to access the site from the west, along the Restricted Byway which passes Willaston. The main concern resulting from this is the disturbance to residential amenity and damage to the unmaintained track. However it is unlikely that the site will be accessed along this route given the minor nature of the connecting highway to the east and the fact that access can be achieved off the main A4421. Furthermore a Construction Travel Plan is to be drawn up and approved which will set out how construction traffic should access the site. It is also likely that signs will be put in place advising that the track does not provide access to the solar farm. Whilst these measures do not alleviate the residents concern they are sufficient to satisfy the Local Highway Authority and these concerns would not be a strong enough reason to recommend the application for refusal.

5.15.4 Other matters raised by third party representations have been covered elsewhere in the report.

5.16 Conclusion

5.16.1 One of the key principles of PPS22 is that wider environmental and economic benefits of all proposals for renewable energy projects, whatever their scale, are material considerations that should be given significant weight in determining whether proposals should be granted planning permission. It is considered that whilst there is some debate about the use of grade 2 agricultural land for this purpose this alone is not a strong enough reason to recommend the application for refusal. Solar Farms are not a common feature in the English countryside and the

principle of them may appear at odds with the character of rural locations therefore probably the most relevant consideration becomes the weight of balance between landscape impact and the need for renewable energy. However the visual impact of the proposal in this location is very localised and not considered to cause demonstrable harm, neither is it considered to harm residential amenities, highway safety, ecology or historic features. It is therefore considered that the balance should fall on the provision of renewable forms of energy as the site will remain in a form of agricultural use with no significant landscape impact.

<p>6. Recommendation</p>
<p>Approval subject to</p> <ul style="list-style-type: none"> a) the Environment Agency not raising objections or in the event of objections being raised a suitable solution to their objections being found; and b) the following conditions;
<ul style="list-style-type: none"> 1. SC 1.4 Full permission: Duration Limit (3 years) (RC2) 2. 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: <ul style="list-style-type: none"> a. Planning application boundary 1:10,000 and 1:5,000 b. C210 Rev. 02 General layout Plan c. C310 Rev. 02 Site Access Roads d. C410 Rev. 02 Fencing and security systems layout and CCTV mast detail e. C510 Rev. 02 Sections 1 of 2 f. C511 Rev. 02 Sections 2 of 2 g. C610 Rev. 02 Vegetation removal plan h. C705 Rev. 02 Typical solar panel details i. C705 Rev. 02 Inverter/Transformer unit layouts j. C707 Rev. 02 Typical fencing and security system details k. C731 Rev. 01 Switch gear & meter housing cabins l. C910 Rev. 02 Cabin drainage details m. 228503/LA/P01 Rev. A Planting plan <p>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 PPS1 – Delivering Sustainable Development.</p> 3. When the solar farm ceases its operational use the panels, support structures and associated buildings shall be removed in their entirety and the land shall be restored to solely agricultural use. 4. Prior to the commencement of development or the delivery of any parts or materials to the site the existing means of access between the development land and the public highway (A4421) shall be widened, formed, laid out, constructed and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Once approved the access works shall be constructed strictly in accordance with the highway authority's specifications and that all ancillary works specified shall be undertaken. (RC13BB) 5. Prior to the commencement of development or the delivery of any parts or

materials to the site the access road (Restricted Byway) serving the site shall be widened to a minimum of 6.5m in width (to enable two Heavy Goods Vehicles to pass each other) for a minimum distance of 20m in length from the access/junction with the A4421 in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Once approved these works shall be constructed strictly in accordance with the highway authority's specifications and that all ancillary works specified shall be undertaken. (RC13BB)

6. Prior to the commencement of development or the delivery of any parts or materials to the site a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority which shall include a condition survey of the route and written agreement that any damage associated with the construction vehicles along the Restricted Byway shall be made good at the applicant's expense. The Construction Traffic Management Plan shall be implemented as approved throughout the construction of the solar farm. (RC18AA)
7. That during the construction phase of the development hereby approved no construction vehicles/deliveries will arrive at or leave the site during the peak times of 0745 to 0900 and 1600 to 1800 – such a restriction will deter queuing on the public highway at busy times. Reason: To limit the potential for queuing along the A4421 as a result of vehicles turning into or out of the site, in the interests of highway safety.
8. Wheel washing facilities
9. That all vehicular traffic serving the development shall enter and leave the site via the access to the South East of the site onto the A4421 and not via any other access. Reason: In the interest of highway safety and to safeguard the amenities of the occupants of the adjacent dwellings during the construction and operation of the solar farm and to comply with Policy ENV1 of the adopted Cherwell Local Plan and guidance within PPG13: Transport.
10. That before the development hereby permitted is brought into first use, the security fencing and the exterior surfaces of the electrical inverter and transformer cabinets and switchgear and meter housing shall be permanently coloured in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. (RC4A)
11. SC 3.1A Carry out Landscaping Scheme (RC10A)
12. SC 3.4AA Retain Existing Hedgerow/Tree Boundary (with access) (RC11A)
13. SC 3.3AA Scheme to be submitted to protect retained trees and hedgerows (RC72A)
14. SC 9.4A Carry out mitigation in ecological report (RC85 A)
15. SC 9.5A Site Clearance (RC86A)
16. That the rated level of noise produced by the electrical conversion and transmission equipment shall not exceed background when measured in accordance with British Standard BS 4142:1997 at the nearest noise sensitive dwelling. (RC53AB)
17. Prior to the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority. Reason: To safeguard the recording and inspection of matters of archaeological importance on the site in accordance with PPS5:

Planning for the Historic Environment.

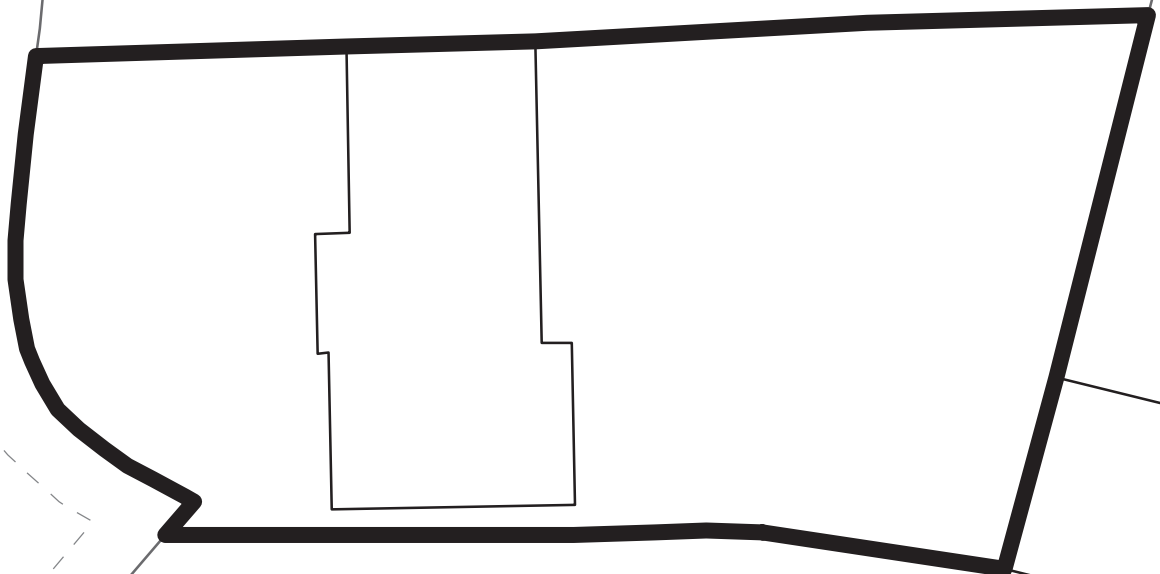
- 18. Prior to the commencement of development and following the approval of the Written Scheme of Investigation referred to in Condition 17, a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority. Reason: To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through the publication and dissemination of the evidence in accordance with PPS5: Planning for the Historic Environment.**
- 19. SC 8.18 No external floodlights/lights (RC50)**
- 20. All cabling on the site to and from the solar farm shall be underground. (RC10A)**

SUGGESTED SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The proposal accords with national policy for the development of renewable energy. The proposal also accords with provisions of the development plan with the exception of policies relating to sporadic development in the open countryside. The landscape impacts are localised in nature and this impact is not considered to be sufficient to outweigh the need for renewable energy generation, which is of regional and national importance. There are no other material considerations which justify a refusal of planning permission.

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Scale
1:250

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11/00230/F



Bodicote

Scale
1:6,000

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Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Application 11/00230/F	No:	Ward: Bloxham and Bodicote	Date 17/02/2011	Valid:
Applicant:	Mr and Mrs Cautley			
Site Address:	35 The Rydes, Bodicote			

Proposal: Proposed extension and alterations

1. Site Description and Proposal

- 1.1 The application site is a detached, dark brick built property with an attached single storey garage, and a large open fronted garden. The site is within a planned, low density residential estate towards the Eastern edge of Bodicote; the estate is adjacent to, but not within the Bodicote Conservation Area.
- 1.2 The proposal is for a first floor extension over the garage, with a two storey gabled extension to the rear.
- 1.3 The application is placed before the committee for determination following the call in request of the local Member.

2. Application Publicity

- 2.1 The application has been advertised by way of a press notice, neighbour letters and a site notice. The final date for comments was 31 March 2011.
- 2.2 One letter of objection has been received from occupiers of the neighbouring property to the East (essentially the rear of the site), expressing concerns over the accuracy of the submitted drawings; the neighbouring property also object to the scheme on the basis of;
 - the appropriateness of the scheme in terms of the character and appearance of the wider estate
 - loss of light
 - visual amenity
 - loss of privacy

3. Consultations

- 3.1 Bodicote Parish Council – strongly object to the scheme;
 - concerned over the accuracy of the submitted drawings
 - harm to the street-scene and character of the estate (as a result of design details and material choices)
 - loss of privacy
 - loss of light

4. Relevant Planning Policies

- 4.1 National Policy Guidance:
PPS1 – Delivering Sustainable Development
- 4.2 Regional Policy in the South East Plan 2009:
CC1 – Sustainable Development
BE1 – Management for an Urban Renaissance
- 4.3 Local Policy in the Adopted Cherwell Local Plan 1996:
Policy C28 – Layout, design and external appearance to be compatible with the character of the context of a development proposal
Policy C30 – Through the exercise of design control, development should provide acceptable standards of privacy and amenity

5. Appraisal

- 5.1 In order to assess the acceptability of this proposal, there are two main issues to consider; the appropriateness of the design for the location, and in the light of the relevant policies in the Plan; the impact of the proposal on the amenity of the neighbouring properties. Policies C28 and C30 of the adopted Cherwell Local Plan seek to ensure that residential development is sympathetic to the character of the context of the development, is compatible with the scale of the dwelling and the street-scene and provides acceptable standards of amenity and privacy.
- 5.2 Turning first to the appropriateness of the design there are again, several issues. Firstly, the first floor extension over the existing garage is not stepped down or back from the original, existing roofline. Whilst this set down is often sought as a design feature of two storey extensions across this district, there are occasions when exceptions to this may be considered appropriate. It is considered that in this case, that exception would be appropriate. The existing forward projection of the central element already serves to break up the roofline and bulk of the dwelling, and the addition of a further roof element would, in the opinion of Officers lead to a cluttered roofline.
- 5.3 Following feedback from the Parish Council, neighbouring properties and Case Officers, the architect has amended the design; reducing the height of the windows to the rear, to standard sized windows (in order to reduce the likelihood of perceived overlooking).
- 5.4 There are points of the design however that the architect does not wish to alter following feedback; notably the set-down in the ridge height and the use of timber boarding to the front (and rear) elevations. These design ideas have been explored in some detail by the architect in a Design Statement submitted with the amended drawings (attached as Appendix 1).
- 5.5 Officers recognise the criticism of the use of different materials in the street-scene, but also acknowledge that there is a case for high quality design being acceptable. It is clear that this is a finely balanced case in terms of design, but the architect has set out sound design reasons for the proposed scheme and design, and it is considered that in this location, this is an acceptable approach, which will lead to a quality development within the wider planned estate.
- 5.6 The second main issue to consider is the impact of the proposal on the amenity of

the neighbouring properties. Given the layout of the estate, and the orientation of the properties, the principal impact is upon #34, which effectively sits to the rear of this property (the gable wall of #34 forms the end boundary of the garden to #35).

- 5.7 The proposed extension will be 13m from the nearest point of the neighbouring property (the gable wall), and approximately 18m from the nearest facing window of the neighbouring property. It is important to note however that the element of the neighbouring property which faces the application site does not contain a habitable room; it is instead the front door to the house, with the garage door adjacent and a downstairs bathroom behind. It is not disputed that the proposal will have an impact on the outlook from the front door of the neighbouring property; but as the impact is on a non-habitable room, it is not considered unacceptable
- 5.8 The proposal is not therefore considered to cause an unacceptable, refuse-able loss of light or privacy to the neighbours, nor is it considered that the privacy of the occupants of the application site would be harmed by the proposal.
- 5.9 The proposal will be visible from the public domain in two regards; the first floor element over the existing garage will be visible from the street, and the rear element will be visible from the path running from Weeping Cross through to The Rydes, between 33 and 35. This is considered acceptable.
- 5.10 As mentioned above, the acceptability of the proposal is finely balanced in terms of the requirements of the local plan, but it is considered to be an acceptable scheme.
- 5.11 The proposal is therefore considered to accord with the provisions of Policies C28 and C30 of the Local Plan; the extension is sympathetic to the character of the context of the development and is compatible with the scale of the dwelling and the street-scene and provides standards of amenity and privacy which are considered acceptable to this authority. It is therefore recommended for approval, subject to conditions.

6. Recommendation

Approval, subject to the following conditions;

- 1) SC 1_4A (Time for implementation)
- 2) 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;
 - drawing WG06-006D (received on 04 April 2011)
 - drawing WG06-007C (received on 04 April 2011)
 - drawing WG06-008C (received on 04 April 2011)
 - the details set out in the application forms

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 in PPS1 – Delivering Sustainable Development.

- 3) SC 2_2AA “timber cladding” and “porch and rear infill-elements” (Material sample)

Planning Notes

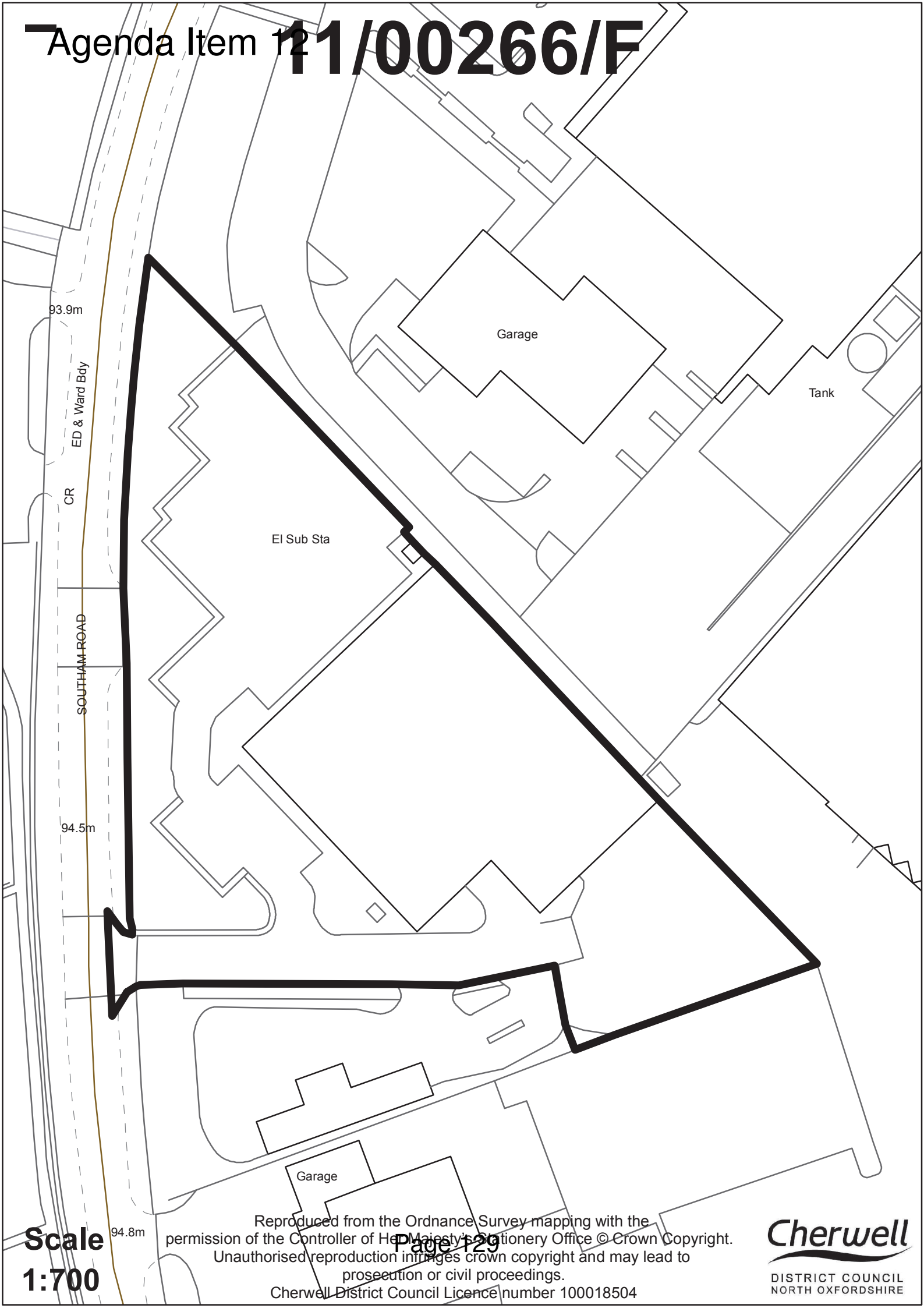
- 1) T1 – Third party rights
- 2) U1 – Construction sites

SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as Local Planning Authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposed development is appropriate and will not unduly impact on the neighbouring properties, public, private or any other amenity, or the appearance of the street-scene. As such the proposal is in accordance with government guidance contained in PPS1 – Delivering Sustainable Development; Policies CC1 and BE1 of the South East Plan 2009; and Policies C28 and C30 of the adopted Cherwell Local Plan. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

CONTACT OFFICER:	Simon Dean	TELEPHONE NO:	01295 221814
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Agenda Item 11/00266/F



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CHERWELL DISTRICT COUNCIL

Application No: 11/00266/F	Ward: Banbury Grimsbury and Castle	Date Valid: 22 February 2011
Applicant:	Colin Knott and Jon Cookson Joint Fixed Charge Receivers	
Site Address:	Unit 1 Adj Topps Tiles, Southam Road, Banbury	

Proposal: Alterations to existing building comprising external alterations at ground floor level including installation of new shop front and entrance feature (front elevation) and new fire escape door (rear elevation), internal alterations including installation of mezzanine floor, three no. fire escape staircases, 1 no. feature customer staircase and new customer lift and consequential reconfiguration of car parking

1. Site Description and Proposal

- 1.1 The property is located on the east side of Southam Road within a mixed commercial area. Adjacent occupiers include retailers of DIY products and car showrooms. The area has developed as a location for the retail of 'bulky' goods but does not lie within the town centre boundary or within an identified local shopping centre.
- 1.2 Planning permission is sought for alterations to the building as set out above.

2. Application Publicity

- 2.1 The application has been advertised by way of a press notice and site notice. The final date for comment was 31 March 2011.
- 2.2 No letters of representation have been received.

3. Consultations

- 3.1 **Banbury Town Council:** no objections
- 3.2 **Head of Planning and Affordable Housing Policy:** provides detailed consideration of the application concluding that whilst the proposal would make use of a long term, vacant unit, the information submitted does not demonstrate that the proposal would not adversely affect the viability and vitality of the town centre.
- 3.3 **County Highways Liaison Officer:** raises no objections stating that appropriate access, levels of parking provision and associated manoeuvring areas would be provided/remain. A contribution is required towards the Local Transport Strategy given the increased vehicular movements that would result from the increase in floorspace.
- 3.4 **Head of Safer Communities:** If it is proposed that the signage to the building be illuminated then prior approval of the lighting levels and method of illumination will be required.

- 3.5 **Thames Water:** raises no objections in relation to the water or sewerage infrastructure

4. Relevant Planning Policies

- 4.1 Planning Policy Statement 1: Delivering Sustainable Development
- 4.2 Planning Policy Statement 4: Planning for Sustainable Economic Growth
- 4.3 Planning Policy Guidance 13: Transport
- 4.4 South East Plan
Policy CC1: Sustainable Development
Policy TC2: New Development and Redevelopment in Town Centres
Policy T1: Transport: Manage and Invest
Policy T4: Parking
- 4.5 Adopted Cherwell Local Plan (1996): No relevant saved policies
- 4.6 Non-Statutory Cherwell Local Plan
Policy S1: Sequential Approach
Policy S2: Maintenance of a Compact Central Shopping Area

5. Appraisal

5.1 Main Planning Considerations

- 5.1.1 The main issues to consider in the determination of this application are as follows:
- Relevant Planning History
 - Principle of Extending Floorspace of Existing Retail Warehouse
 - Sustainable Economic Growth
 - Economic growth, job creation and wider development plan objectives.
 - Transport, Highways and Access
 - Design/Visual impact
- Each of these matters will be considered in turn.

5.2 Relevant Planning History

- 5.2.1 01/01358/OUT: Demolition of existing building and erection of non-food bulky goods retail unit inc. alterations to existing vehicular and pedestrian access to the highway (as amended by plans received 16.09.02) – APPROVED
- 5.2.2 Condition 6: That the retail use hereby permitted shall be limited to building materials, DIY home and garden improvement products, hardware, self assembly and pre-assembled furniture, household furnishings, floor coverings, motor accessories, electrical goods and office supplies and for no other purpose whatsoever notwithstanding the provisions of Class A1 of the Town and Country

Planning (Use Classes) Order 1987 (as amended), other than the ancillary sale of sweets or food consumption on the premises, providing the area given over to the sale of such items does not exceed 10% of the floor area of the unit.

Reason - In order to minimise the impact on the vitality and viability of the retail outlets in Banbury Town Centre.

- 5.2.3 02/02659/REM: Reserved matters application ref: 01/01358/OUT for erection of non-food bulky goods retail unit (as amended by plans and letter received on 16.01.03) – APPROVED

5.3 Principle of Extending Floorspace of Existing Retail Warehouse

- 5.3.1 Amongst a small range of relatively minor external alterations which are assessed below in terms of their design and visual impact, this proposal seeks consent for the creation of a mezzanine floor measuring 1,006sqm. The existing unit has a floor area of 1,394sqm therefore the total floorspace for the unit would amount to 2,400sqm. These physical alterations are required in connection with Dunhelm's proposals to occupy the unit subject to gaining planning permission for the parallel application 11/00267/F which seeks consent to vary the range of products that could be sold from the unit. The existing restrictive condition limits the sale of goods to 'bulky' goods only.
- 5.3.2 Given the submission of two separate applications, the two matters (variation of condition and alteration including the insertion of mezzanine floor) are given separate consideration. The assessment of this application therefore lies mainly with whether or not the increase in the footprint of the building could be considered acceptable in relation to the *current* use of the building i.e. the sale of 'bulky' goods.
- 5.3.3 The existing unit is considered to be a retail warehouse, which under Annex B of PPS4 is defined as a large store specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering mainly for car-borne customers. Furthermore, the unit is situated in an out of centre location, defined in the same annex as a location which is not in or on the edge of a centre but not necessarily outside the urban area.
- 5.3.4 At the time of the outline application in 2001 which granted planning permission for the existing unit, the Council concluded that, based on the applicant's retail assessment and the corresponding assessment made by a retail consultant employed by the Council at the time of the application, there was a quantitative need for the proposed retail warehouse which was reflected by a lack of provision of such retailers in the Banbury catchment area and which consequently resulted in significant leakage of expenditure away from Banbury. Furthermore, it was considered that there would be capacity in expenditure terms to support the modest scale of additional retail warehousing floorspace despite a further retail warehouse commitment on an adjacent site (now Homebase) and that the proposal satisfied the requirements of the sequential approach which had demonstrated at that time that the proposal would not lead to any measurable adverse impact upon the town centre. This conclusion was subject to various planning conditions which included the restriction over the sale of non-bulky goods.

- 5.3.5 In light of the favourable conclusions that were drawn in relation to the development of a new retail warehouse measuring in total 1,860sqm, the principle of such a use in this location has been established. The assessment that must now be made is whether or not the addition of 1,006sqm retail floorspace within an approved but restricted retail warehouse is acceptable or not when considered against planning policy.
- 5.3.6 Whilst there are a number of policies contained within PPS4 which refer to the consideration of applications for development of main town centre uses not in a centre and not in accordance with an up to date development plan and the associated sequential and impact assessments of such development, this particular proposal, by virtue of the previous consent and restrictive condition is not considered to be a main town centre use (being a retail warehouse more commonly found in edge or out of town centre locations) and as such it is only necessary to give consideration to policies EC10 and EC11 of PPS4 in relation to the proposal.
- 5.3.7 Policy EC10 relates to the determination of a planning application for economic development, setting out that planning applications which secure sustainable economic growth should be treated favourably taking into consideration matters relating to climate change, accessibility by a choice of means of transport, high quality and inclusive design, impact upon economic and physical regeneration and impact upon local employment.
- 5.3.8 In addition, Policy EC11, which refers to the assessment of planning applications for economic development other than main town centre uses, requires local planning authorities to weigh market, economic, environmental and social factors, take full account of any long term benefits and consider whether the proposal helps to meet the wider objectives of the development plan.
- 5.3.9 Turning to the requirements of Policy EC10, a critical assessment must be made of the application submission which should be weighed against the independent evidence (both historical and recent) that is available to the Council.

5.4 Climate Change

- 5.4.1 The unit already exists and has remained vacant since construction in 2003/2004, which the applicant describes as being an unsustainable use of the land given the imbedded energy in the construction of the building. Reference is made to incorporating energy saving technology as part of the use of the building (although little evidence of this approach is apparent throughout the submission) however it is stated that the unit does not afford significant opportunity to incorporate such technology retrospectively.
- 5.4.2 SDPHE considers that making use of the building (whether extended internally or not) would be more sustainable than it remaining empty. However it should be noted that the addition of a mezzanine floor of 1,006sqm is likely to attract further vehicular movements to the site (which is referenced by the Local Highway Authority) which would result in greater carbon dioxide emissions and it is considered that opportunities to reduce carbon emissions from the building could be further explored. Nevertheless these issues must be balanced against the

advantage of making use of an existing resource (the building). Whilst SDPHE considers that the efficiency of the building could be improved it is concluded that it could not be demonstrated that the mezzanine extension would result in carbon emissions so great that the application could be refused on these grounds.

5.5 Accessibility by a Choice of Means of Transport

- 5.5.1 The applicant states that the site is accessible from the main road network, is within close proximity to other bulky goods retailers (allowing linked trips) and makes reference to bus services running along Southam Road, the location of the site in relation to the town centre and the site being accessible on foot and by bicycle.
- 5.5.2 Given the bulky goods nature of the existing retail warehouse use, the likely and accepted means of transport to the site (as referred to in PPS4) is by private vehicle. The site benefits from being closely related to a main road and therefore access by private vehicles is good. There are other means of transport available for accessing the site to an extent, however it is unlikely, given the range of products that could lawfully be sold from the unit that these would be made use of.
- 5.5.3 SDPHE is satisfied that given the nature of the lawful use of the building, it is accessible by appropriate means of transport.

5.6 High Quality and Inclusive Design

- 5.6.1 The original building was designed to a high standard and remains to be of that quality on the site. The applicant's intention to make a greater feature of the frontage and include features such as a step free entrance from the car park level represents inclusive design.

5.7 Impact upon Economic and Physical Regeneration

- 5.7.1 With regard to physical regeneration, as the unit already exists, SDPHE does not consider that this matter applies in this case. The physical alterations to the building as referred to above are considered to be acceptable which will form part of the continued regeneration of the area and as such are supported.
- 5.7.2 In terms of economic regeneration, evidence provided at the time of the 2001 application indicated that there was a lack of provision of 'bulky goods' retail within Banbury's catchment area and as such leakage of expenditure away from Banbury was occurring; one of the factors which lead to the acceptability of the proposal at that time. It was concluded that the proposal was acceptable despite the retail warehouse commitment on the adjacent site.
- 5.7.3 Whilst the applicant makes reference to the CBRE study and its 2010 addendum, this does not provide specific evidence in SDPHE's view that there is a lack or otherwise of warehouse retailing as it focuses mainly on the town centre. Nor is reference made to leakage of expenditure out of Banbury's catchment area due to lack of warehouse retailing opportunities.
- 5.7.4 Based on the evidence available from 2001 and the fact that conclusions were drawn about there being capacity for retail warehousing over and above the existing commitments at that time, together with no significant permission being

granted for further retail warehouses in Banbury since that time, it is reasonable to conclude that there is still some capacity for retail warehousing (particularly as the unit in question has not yet been occupied) and as there was expenditure leakage outside of the Banbury catchment area at that time, a modest extension of 1,006sqm of retail warehousing could assist with 'clawing back' some of this leakage. SDPHE is therefore satisfied that the proposal for an extension to the floorspace of this retail warehouse unit would assist with economic regeneration.

5.8 Local Employment

- 5.8.1 Whilst the submission makes reference to securing 50 jobs if Dunhelm were to occupy the building, their occupation of the building is not guaranteed. The application must be assessed therefore in terms of its contribution generally to local employment. The building has remained empty since it was constructed. Whilst this may well be reflective of the economic downturn in more recent years, it may also be concluded that the available internal floor space (1,394sqm) provided since the subdivision of the unit to provide premises for Topps Tiles is not attractive to the majority of warehouse retailers due to its smaller size in comparison to other leading companies. The addition of a further 1,006sqm could assist with creating a more attractive space for warehouse retailers and as such increase the likelihood of the unit being occupied, bringing with it local employment opportunities. For this reason, regardless of the specific company that may occupy the building, SDPHE is satisfied that the application to extend the available floorspace has the potential to meet local employment objectives and should therefore be supported on these grounds.
- 5.8.2 Based on the requirements relating to Policy EC10 of PPS4, SDPHE is satisfied that the proposal to extend the footprint of the building internally is acceptable in principle.
- 5.8.3 With regard to the requirements of Policy EC11 of PPS4 much of the points for consideration overlap those referred to under Policy EC10 and therefore they are addressed below as one entity.
- 5.8.4 As referred to above, the proposal is capable of securing a number of benefits including making use of an existing resource, creating a number of job opportunities and assisting with reducing the level of expenditure leakage to centres other than Banbury (due to a current lack of retail warehousing). Furthermore, the proposal is capable of contributing towards the wider objectives of the development plan by securing a sustainable form of development in a location which has been established as sequentially appropriate for a retail warehouse.

5.9 Conclusion (in relation to principle)

- 5.9.1 To conclude in relation to the principle of extending the building by way of a mezzanine floor creating an additional 1,006sqm SDPHE is satisfied that it represents a sustainable approach to economic development which would assist with economic growth, job creation and the wider sustainability objectives of the development plan. As such the proposal compiles in principle with the provisions of PPS4.

5.10 Highway Safety

- 5.10.1 As set out above, the Local Highway Authority raises no objections to the creation of additional floorspace within the building commenting that an appropriate access, level of parking provision and associated manoeuvring areas would be provided/remain and stating that the submitted staff travel plan is appropriate and provides reasonable and practical objectives and measures in the interests of reducing single occupancy car trips (recommended to be secured via condition).
- 5.10.2 In addition to the above comments, SDPHE is advised that the increase in floor space would attract a greater number of trips to and from the site and it can be expected that most of these trips would be made by car and furthermore the proposal is likely to increase the number of deliveries and associated vehicles. The Local Highway Authority considers that the small increase in traffic, which is foreseen, would be unlikely to have any measurable impact upon any specific part of the local network; however, a local transport strategy is in place to tackle congestion and promote sustainable transport services and infrastructure.
- 5.10.3 The Local Highway Authority seeks financial contributions towards the strategy in proportion to peak hour trip generation. Currently, a contribution of £2,100 is requested per additional average peak hour trip, therefore a contribution of £9,450 at price base Baxter Jan 2011 is required. The financial obligations can be met via a Unilateral Undertaking.
- 5.10.4 Based on the above assessment of the proposal in highway safety terms and subject to the receipt of the required financial contributions towards the local transport strategy and a condition relating to the travel plan, SDPHE considers that the proposal complies with PPG13. It should be noted however that in relation to the Travel plan, it would be unreasonable to tie this via condition to Dunhelm. Instead a more standard approach to securing a Travel plan via condition should be taken.

5.11 Design and Visual Amenity

- 5.11.1 The alterations to the external appearance of the building would be relatively minor, involving a new shop front opening, centrally positioned on the north west facing elevation (rather than being positioned to the far west of this elevation), and a new fire escape opening on the south east elevation. The arrangement of the existing parking provision would be reconfigured to allow for the repositioning of the shop entrance. The proposed alterations would be visually appropriate given the context of the area and the reconfiguration of the shop frontage would create a visual focal point for the entrance to the building. SDPHE therefore considers that the proposal would be appropriate in design and visual amenity terms in accordance with PPS1: Delivering Sustainable Development and Policy BE1 of the South East Plan.

5.12 Conclusion

- 5.12.1 This proposal represents a relatively modest increase in the floorspace of an existing acceptable retail warehouse. Subject to the retention of the restrictive condition which excludes the sale of non-bulky goods, the proposal is acceptable in principle as the application is considered to represent development appropriate for

an out of centre location would assist with sustainable economic growth and job creation and is appropriate when considered against the wider objectives of the development plan (assisting with 'clawing back' expenditure leakage into other catchment areas).

5.12.2 The development would not cause harm to highway safety or convenience and would be appropriate in design and visual amenity terms.

6. Recommendation

Approval; subject to:

i) the applicant entering into a planning obligation satisfactory to the District Council to secure a contribution towards the Local Transport Network

ii) the following conditions:

1. SC1.4A (RC2)Time Limit (RC1)

2. That the retail use of the unit shall be limited to building materials, DIY home and garden improvement products, hardware, self assembly and pre-assembled furniture, household furnishings, floor coverings, motor accessories, electrical goods and office supplies and for no other purpose whatsoever notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005, other than the ancillary sale of sweets or food consumption on the premises, providing the area given over to the sale of such items does not exceed 10% of the floor area of the unit.

Reason: In order to minimise the impact on the vitality and viability of the retail outlets in Banbury Town Centre and to comply with PPS4: Delivering Sustainable Economic Development and Policy EC2 of the South East Plan.

3. The retail unit hereby permitted shall not be subdivided to enable any single unit to comprise less than 465 square meters (5,000sq.ft) gross floorspace.

Reason: In order to minimise the impact on the vitality and viability of the retail outlets in Banbury Town Centre and to comply with PPS4: Delivering Sustainable Economic Development and Policy EC2 of the South East Plan.

4. That no goods, materials, plant or machinery shall be stored, repaired, operated or displayed in the open without the prior express permission of the Local Planning Authority

Reason: (RC50).

5. 4.14DD (RC66A) [Green Travel Plan]

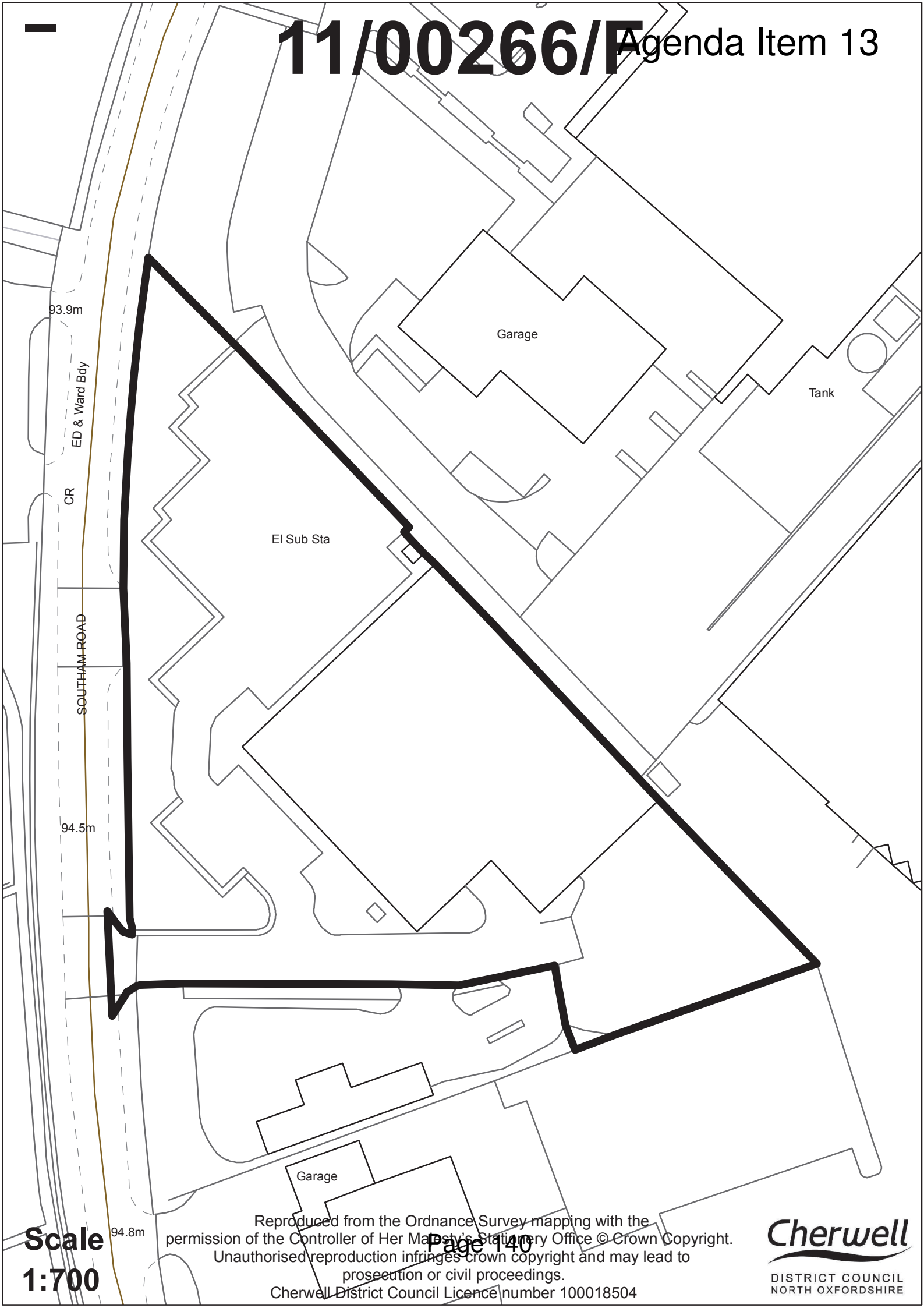
SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan, unless material considerations indicated otherwise. Incorporating

and adhering to the above conditions, the development is considered to be acceptable on its planning merits as the proposed development is considered to be acceptable in principle as it would assist with reducing expenditure leakage to other centres, would not cause harm to the vitality and viability of Banbury Town Centre and would not give rise to any unacceptable risk to highway safety, nor would it be detrimental to visual amenity. As such the proposal is in accordance with PPS1: Delivering Sustainable Development, PPS4: Delivering Sustainable Economic Development, PPG13: Transport, Policies CC1, TC2, T1 and T4 of the South East Plan 2009 and Policies S1 and S2 of the non-statutory Cherwell Local Plan. For the reasons given and having regard to all other matters raised including third party representations, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

CONTACT OFFICER: Jane Dunkin

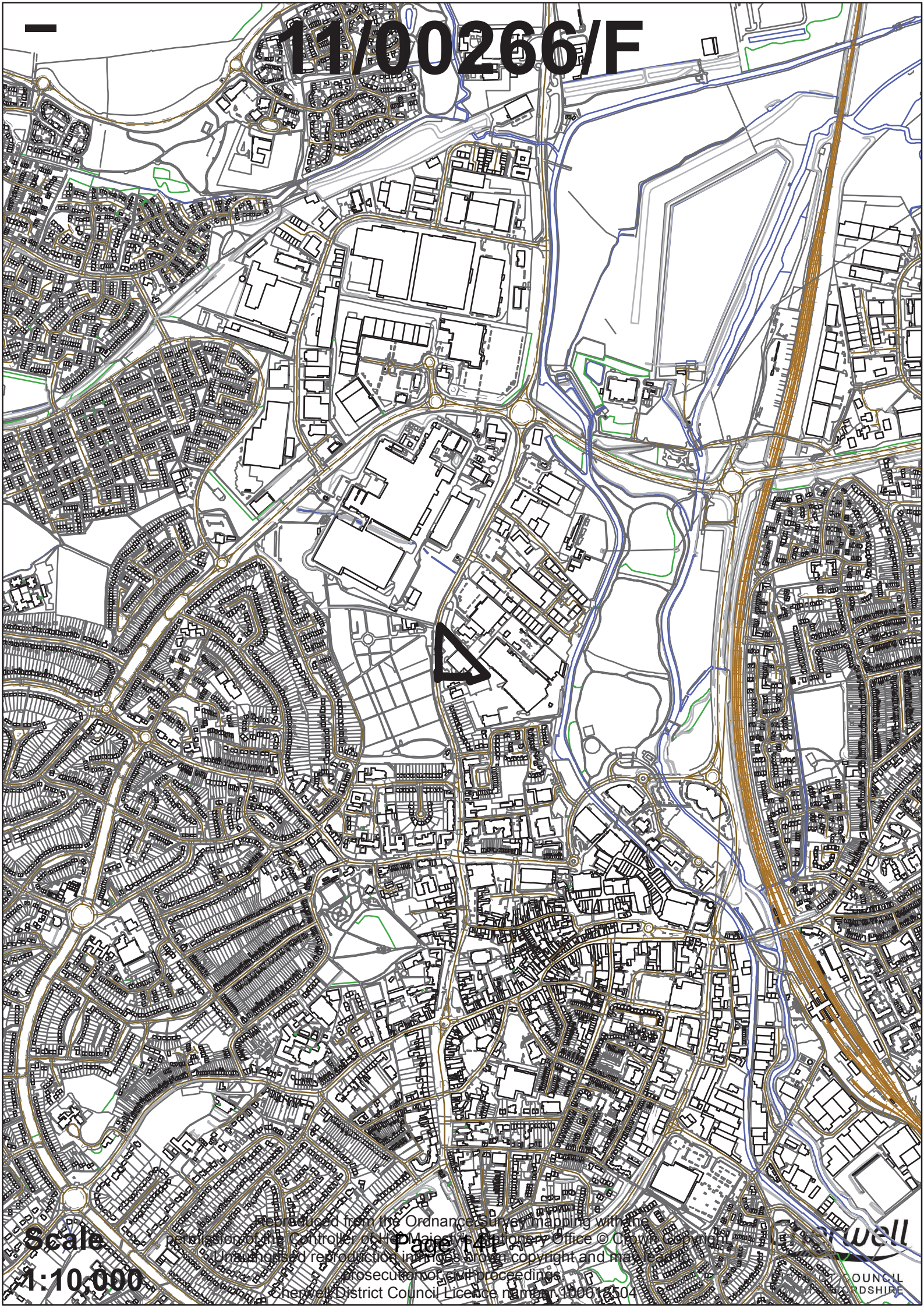
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CHERTSEY DISTRICT COUNCIL
SURREY

Application No: 11/00267/F	Ward: Banbury Grimsbury and Castle	Date Valid: 22 February 2011
Applicant:	Colin Knott and Jon Cookson Joint Fixed Charge Receivers	
Site Address:	Unit 1 Adj Topps Tiles, Southam Road, Banbury	

Proposal: Variation of condition no 6 of 01/01358/OUT

1. Site Description and Proposal

- 1.1 The property is located on the east side of Southam Road within a mixed commercial area. Adjacent occupiers include retailers of DIY products and car showrooms. The area has developed as a location for the retail of 'bulky' goods but does not lie within the town centre boundary or within an identified local shopping centre.
- 1.2 Planning permission is sought for the variation of condition no. 6 of outline planning application 01/01358/OUT (which restricts the sale of non-bulky goods from the premises) to allow an increased range of non-bulky goods to be sold.

2. Application Publicity

- 2.1 The application has been advertised by way of a press notice and site notice. The final date for comment was 31 March 2011.
- 2.2 No letters of representation have been received.

3. Consultations

- 3.1 **Banbury Town Council:** no objections providing still limited with no general food sales
- 3.2 **Head of Planning and Affordable Housing Policy:** provides detailed consideration of the application concluding that whilst the proposal would make use of a long term, vacant unit, the information submitted does not demonstrate that the proposal would not adversely affect the viability and vitality of the town centre.
- 3.3 **County Highways Liaison Officer:** raises no objections stating that the proposal would not generate any increased level of traffic or parking demand that would have a significant impact upon on the local highway network.

4. Relevant Planning Policies

- 4.1 Planning Policy Statement 1: Delivering Sustainable Development
- 4.2 Planning Policy Statement 4: Planning for Sustainable Economic Growth

- 4.3 Planning Policy Guidance 13: Transport
- 4.4 South East Plan
Policy TC2: New Development and Re-development in Town Centres
- 4.5 Adopted Cherwell Local Plan (1996): No relevant saved policies
- 4.6 Non-Statutory Cherwell Local Plan
Policy S1: Sequential Approach
Policy S2: Maintenance of a Compact Central Shopping Area

5. Appraisal

5.1 Main Planning Considerations

- 5.1.1 The main issues to consider in the determination of this application are as follows:
 - Planning History
 - Principle of out of Town Retail
 - Sequential Test
 - Impact Assessment
 - Transport, Highways and Sustainability
 - Visual Amenity

Each of these matters will be considered in turn.

5.2 Planning History

- 5.2.1 00/01478/OUT: Demolition of existing building and erection of a leisure facility (Outline) (as amended by plans received on 02.02.01) – REFUSED

Reason for Refusal

The proposed development, by reason of its location, is considered to be contrary to Policy TC4 of the Oxfordshire Structure Plan 2011, Policy S1 of the Cherwell Local plan 2011 Deposit Draft and the guidance given in Planning Policy Guidance Note 6 in that the considerations of the sequential test have not been fully satisfied and that the strategy within the emerging development plan requiring major retail and commercial leisure developments to be sited in suitable town centre locations as first preference would be harmed by the proposal. Furthermore, the proposal would not contribute to the enhancement of the vitality and viability of the town centre and could prejudice the viability of commercial leisure proposals in the town centre, where opportunities exist for such development consistent with the Development Plan and PPG6.

- 5.2.2 01/01358/OUT: Demolition of existing building and erection of non-food bulky goods retail unit including alterations to existing vehicular and pedestrian access to the highway (as amended by plans received 16.09.02) – APPROVED

Condition 6: That the retail use hereby permitted shall be limited to building materials, DIY home and garden improvement products, hardware, self assembly and pre-assembled furniture, household furnishings, floor coverings, motor

accessories, electrical goods and office supplies and for no other purpose whatsoever notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 (as amended), other than the ancillary sale of sweets or food consumption on the premises, providing the area given over to the sale of such items does not exceed 10% of the floor area of the unit.

Reason - In order to minimise the impact on the vitality and viability of the retail outlets in Banbury Town Centre.

- 5.2.3 02/02659/REM: Reserved matters application ref.: 01/01358/OUT for erection of non-food bulky goods retail unit (as amended by plans and letter received on 16.01.03) - APPROVED
- 5.2.4 07/01129/F: Section 73 application to vary condition 6 of permission 01/01358/OUT to allow food retail (as amended by revised plan received 27.07.07) – REFUSED and DISMISSED AT APPEAL

Reasons for Refusal

1 a) The Local Planning Authority considers that the proposal being in an out-of-centre location is contrary to Policy TC1 of the Oxfordshire Structure Plan 2016 and is also contrary to Policy TC2 of the Oxfordshire Structure Plan and the requirements of PPS6 – Planning for Town Centres as the proposal is in an out-of-centre location where the applicant has not demonstrated that a quantitative or qualitative need exists for the development nor that all sequentially preferable sites in the town centre or edge-of-centre have been thoroughly assessed as being unavailable, unsuitable or not viable before considering the proposed out-of-centre location.

b) In addition, the Local Planning Authority is concerned that the proposal, if approved, would be detrimental to the vitality and viability of the town centre insofar as it could have an adverse effect upon investment in the future provision of convenience floor space in the town centre and could impact upon existing food retailers in the town centre, which would potentially reduce the range of shops and services provided in the centre, to the disadvantage of less mobile social groups leading to increased social exclusion.

c) Furthermore, the Local Planning Authority considers that the proposal would promote increased use of the private car that runs contrary to the objectives of PPS1 and PPG13 and would increase the risk of social exclusion of less mobile groups because the site is in an out-of-centre location that is not accessible by a choice of means of transport, including public transport, and is principally accessible by private car, with limited opportunities to reduce car journeys or undertake linked trips.

d) Finally, the Local Planning Authority has concluded that there are no material considerations sufficient to outweigh the development plan and policy conflicts identified in this reason for refusal.

2. In the absence of a satisfactory unilateral undertaking or any other form of s106 legal agreement the Local Planning Authority is not satisfied that the transport infrastructure required to serve the proposed development will be provided, which would be contrary to Policies G3 and T8 of the Oxfordshire Structure Plan.

5.2.5 Summary of Inspector's reasons for Refusal

- **Accessibility**
 - Location not well served other than private car
 - Well beyond convenient walking distance from town centre
 - Close to little existing housing
 - Unattractive to pedestrians/cyclists
 - No evidence of buses stopping
 - Would not facilitate multi-purpose journeys
 - Linkages between the sale of bulky goods and food is limited
 - Existing arrangement discourages linked trips
 - No s106/Unilateral Undertaking
- **Need and Impact**
 - Would exacerbate deficiency of Town Centre convenience stores
 - Would exacerbate leakage of convenience expenditure
 - Would jeopardise trading performance of town centre stores
 - Evidence wholly unconvincing
 - Existing stores vulnerable
 - Convenience sector of town centre is lower than average
 - Under representation of convenience outlets in the town centre
 - Fails crucial PPS6 tests

5.2.6 07/02409/F: Section 73 application to vary condition 6 of permission 01/01358/OUT to allow food retail (resubmission of 07/01129/F) – REFUSED

Reasons for Refusal

Same as for 07/01129/F

5.2.7 Summary of Planning History

Based on the above planning history for the site, it can be concluded that the Council considers the site to be appropriate for a retail warehouse use, subject to a restriction over the goods sold.

5.2.8 The site has not however been considered appropriate for leisure or food shopping. The reasons for refusal include inconclusive sequential testing, the impact upon the vitality and viability of the town centre, the impact upon future town centre proposals, increased use of the private vehicle and the social exclusion of the less mobile.

5.2.9 Whilst the current proposal is not for leisure or food retail shopping, consideration must be given to these general themes when considering the proposal for the sale of a range of non-bulky goods. These matters are explored throughout the assessment of the application below.

5.3 Principle of Development

5.3.1 The proposal seeks to vary condition 6 of 01/01358/OUT which is set out in paragraph 5.2.2 above so that it can be used by Dunhelm which is a homeware and soft furnishings store. Given the range of products that this retailer sells, permission is sought to vary condition 6 so that certain items can be lawfully sold from the site in addition to those products previously referred to. The additional

items include fabric, household goods, homewares, soft and hard household furnishings and decorative products.

- 5.3.2 In their supporting statement the applicants claim that the key to the company's success has been its ability to stock a wide range of home furnishing products in large units, which it sells at value prices. Furthermore, the business model requires large retail units which are difficult to achieve in town centre locations.
- 5.3.3 Applications for the provision or extension of out of town centre retail units must be considered against PPS4 which requires thorough sequential and impact assessments to be carried out in relation to any proposal submitted. Due to its date of adoption, PPS4 outweighs the Council's adopted development plan, and as such the proposal is considered against those policies which relate to development proposed in an out of town centre location which are not in accordance with an up to date development plan.
- 5.3.4 A sequential assessment must make a thorough assessment of all town centre sites, taking into account their availability, suitability and viability. Where it is demonstrated that no town centre sites are available, preference must be given to edge of town centre locations that have good pedestrian links to the town centre and flexibility must be demonstrated (scale, format, car parking and disaggregation).
- 5.3.5 An impact assessment must take into account impact upon a) private investment in a centre or centres within the same catchment, b) town centre vitality and viability, c) allocated sites being developed in accordance with the development plan, d) in centre trade/turnover and trade in the wider area, e) the extent to which the proposal is of an appropriate scale if located in or on the edge of a town centre and f) locally important impacts on the town centre.
- 5.3.6 The agent for the application has provided a retail assessment which requires critical analysis against the relevant policies within PPS4 in order to make an assessment as to whether the application could be considered to be acceptable or not in principle.

5.4 **Sequential Assessment**

- 5.4.1 Assessment of town centre sites (taking into consideration availability, suitability and viability)
- 5.4.2 The submitted retail assessment gives consideration to the eight sites that formed part of the sequential testing for the extension to the Sainsbury's superstore on Oxford Road in Banbury in 2008, four of which are town centre locations, the remaining four are edge of town centre. Furthermore the applicant has sought to identify any further sites which have become available in the interim period, these include two sites which they state are now no longer available.
- 5.4.3 The applicant identifies three requirements for the proposed store which includes sufficient floorspace, adjacent surface level car parking and appropriate external servicing and delivery areas. The assessment concludes that no sites have been identified that are suitable and available which would viably accommodate such development.

- 5.4.4 In contrast to this application, the sequential test carried out in relation to application 10/01347/F for a hotel and restaurant at Land at Kraft Foods in Banbury gave consideration to 31 sites, 16 of which were, in the opinion of the applicant for that application, sequentially preferable. Whilst many were concluded to be unavailable or unviable at the time of that application, they have not been reconsidered as part of this proposal. The sites include Town Centre House, Car Park at Upper Windsor Street, Land at Cherwell Street, sites at Lower Cherwell Street, Station Approach and the former Spiceball Leisure Centre. Furthermore, Officers are aware of two other sequentially preferable sites which may be suitable for Dunhelm which include Crown House and Unit 1B, 10 Calthorpe Street.
- 5.4.5 Whilst evidence of sequential testing has been carried out, given that there is knowledge of other sites within town centre and edge of centre locations, Officers are not satisfied at this stage that a thorough and conclusive sequential test has been carried out which adequately demonstrates that there are no other sites suitable in these locations to accommodate the proposed Dunhelm store.
- 5.4.6 Demonstration of flexibility (scale, format, car parking and disaggregation)
- 5.4.7 It would seem from the application submission that little flexibility can be demonstrated by a Dunhelm store. It is claimed that Dunhelm's unique selling point is 'for customers to be able to obtain the full range of home furnishings all under one roof'. It is also stated that 'the approach is a wholly integrated offer without separate defined elements, with all product ranges contributing to the viability of the store. Removal of product ranges could jeopardise the viability of the whole store'. For these reasons, the retail assessment concludes that there are 'genuine difficulties associated with Dunhelm having to operate their business within a town centre location'.
- 5.4.8 Of the four indicators to take into consideration when assessing flexibility, SDPHE considers that the level to which a company can consider disaggregation has a direct impact upon scale, format and car parking. For instance, if SDPHE were to accept the argument that the full range of products (including bulky and non bulky goods) had to be sold under one roof it would be reasonable to expect that a larger scale building with adjacent car parking and servicing/delivery opportunities would be required. Due to these requirements, available opportunities for the accommodation of a Dunhelm store are more likely to be in edge of center or out of centre locations.
- 5.4.9 However, whilst noting the applicant's reference to an integrated offer of product ranges, Officers are not convinced by the submission that Dunhelm could not operate in a disaggregated way. The applicant refers to genuine difficulties associated with operating in a town centre location, which would be accepted if the whole product range were to be sold from such a location due to difficulties with the delivery and collection of bulky goods as a result of access and parking, however there is little reference to (or evidence to support) the reasons why it would be so difficult for Dunhelm to sell bulky goods from an approved retail warehouse location and the rest of the product range from a town centre location and thus a smaller scale premises.

- 5.4.10 Furthermore, the retail assessment states only that the removal of product ranges *could* jeopardise the viability of the whole store rather than stating that it would be jeopardised and there is no clear evidence to support this statement.
- 5.4.11 In relation to sequential assessment and the demonstration of flexibility, for the above reasons SDPHE is not satisfied that the submission gives consideration to the full range of potentially available sites nor does it demonstrate flexibility or that disaggregation of the product range could not be viably achieved which is in conflict with Policy EC15 of PPS4.

5.5 **Impact Assessment**

5.5.1 Public and Private investment in a centre or centers within the same catchment

5.5.2 The retail assessment states that there are no proposed town centre development schemes. It should be noted however that the Council is active in considering the future of a number of edge of town centre sites, at least some of which may accommodate some element of retail, namely Bolton Road, Old Spiceball site and Canalside. No reference has been made by the applicant in terms of the impact of the proposal upon these future sites. On a smaller scale, there are a number of recent applications (approved and proposed) for retail development including sites at Calthorpe House, Warehouse Adj 12 Marlborough Road, Pepper Alley and 5 Butchers Row. No consideration has been given to the impact of the proposal upon these commitments.

5.5.3 It is SDPHE's view that in the absence of any evidence to the contrary, the approval of an out of centre retail unit could not be considered to have no impact upon these committed and proposed retails uses. With no verification in relation to this matter SDPHE is not satisfied that public and private investment would not be impacted upon by the proposal.

5.5.4 Town centre vitality and viability

5.5.5 The applicant's reference to the Bolton Road site (Draft Core Strategy allocation) is noted, however PPS4 requires assessment in relation to town centre vitality and viability giving consideration to consumer choice and the range and quality of the comparison and convenience retail offer. It is reasonable therefore to give consideration to the existing town centre circumstances rather than those that have not yet been allocated. Banbury town centre accommodates a range of retail units which offer good provision of comparison goods retailers targeted mainly at the middle/market class (CBRE 2010 Retail Update). Giving consideration to Dunhelm's range of products, it is considered that there is the potential for a level of overlap that could negatively affect the vitality and viability of the town centre. Retailers such as Cargo Homestore, Debenhams, British Home Stores, Fashion Fabrics, Laura Ashley and Robert Dyas (together with other smaller one off retailers), all sell the products that Dunhelm wish to sell from the proposed site in addition to those that can already be lawfully sold (fabric, household goods, homewares, soft and hard household furnishings and decorative products).

5.5.6 The retail assessment accepts that as a result of Dunhelm occupying the unit in question there may be some overlap with goods sold in the town centre, however it

goes on to state that the degree of overlap would be minimal. The assessment provides no evidence to support this statement and furthermore, it is stated elsewhere that the company's main focus is on home textiles (curtains bed linen, bath linen, cushions, fabrics, quilts, rugs and soft kitchen); products which are all sold from the town centre. In addition to this, Appendix 6 of the retail assessment provides a breakdown of the product range and the percentage of floorspace of the retail unit that each would occupy. SDPHE's own conclusion from this information is that a minimum of 60% of the retail unit would offer non-bulky comparison goods that could be purchased from existing retailers in the town centre. Therefore it could only be concluded that the proposal to allow the sale of non-bulky comparison goods from the proposed unit would have the potential to attract consumers away from the town centre, therefore having an impact upon the goods sold and subsequently affecting the town centre's vitality and viability. This would have the potential to jeopardise existing retailers in the town centre creating a less compact and sustainable centre and would also result in reducing opportunities for those that are less mobile in conflict with sustainability objectives.

- 5.5.7 Given the observations and conclusions drawn, SDPHE considers that the proposal does not demonstrate that there would not be an unacceptable impact upon the vitality and viability of the town centre.
- 5.5.8 Development of existing allocated sites
- 5.5.9 The statement of the retail assessment on this issue is noted. The draft allocation of the Bolton Road site is not yet adopted and there are no other allocated retail sites within Banbury Town Centre.
- 5.5.10 In centre trade/turnover and trade in the wider area
- 5.5.11 SDPHE considers that the impact of the proposal upon trade is covered at 5.5.5 – 5.5.7 above.
- 5.5.12 Appropriateness of scale
- 5.5.13 It is considered that as the site is beyond the edge of the town centre this element of EC16 does not apply to the consideration of the proposal.
- 5.5.14 Locally important impacts on the town centre
- 5.5.15 It is not considered that the proposal would give rise to any locally important impacts on the existing town centre over and above those set out at 5.5.5-5.5.7
- 5.5.16 Advice from the Head of Planning Policy and Economic Development sets out that a full Retail Impact Assessment is essential (despite the proposal not meeting the threshold for requiring such assessments) where it is considered that the proposal would have a significant impact upon other centres. In response to this advice, the applicant does not consider that the proposal would have a significant impact upon other centres. However given the above assessment the SDPHE is not convinced that the impacts would not be significant. Indeed there is a lack of supporting evidence from the application to discount this concern. Therefore based on the inconclusive information submitted it is considered that a full Retail Impact Assessment is required.

5.6 OTHER MATTERS

5.6.1 Transport Impact/Highway Safety/Sustainability

5.6.2 The Local Highway Authority raises no objections to the proposal to vary the existing planning condition relating to the site, stating that it would not generate any increased level of traffic or parking demand that would have a significant impact upon on the local highway network. The Local Highway Authority continues by stating that the application site is poorly served by alternatives to the private motor car; however there is some opportunity for linked trips and neighbouring uses are broadly similar to that proposed. Also, it is consider that the proposed use would not significantly alter the nature of goods sold, ie 'bulky' and such items would be inconvenient to transport around town centres, especially by public transport.

5.6.3 SDPHE notes the conclusions drawn in terms of the impact of the proposal upon the level of traffic generated by the proposal although the fact that the site is poorly served by alternatives to the private motor vehicle must be taken into consideration. It is also contested that the proposed use is broadly similar to neighbouring uses. Whilst Dunhelm does sell an element of bulky goods, as referred to above the main focus is on home textiles which does not compare to the likes of Homebase and B&Q. To that end, the nature of goods sold from the site would not necessarily all be bulky in conflict with the Local Highway Authority's conclusions and therefore the inconvenience experienced with transporting such goods around the town centre must be questioned.

5.6.4 Visual Amenity

5.6.5 No physical alterations are proposed in relation to this particular proposal. As such the application to vary the condition would have no impact upon visual amenity, complying with general design principles as set out in PPS1: Delivering Sustainable Development.

5.7 Conclusion

5.7.1 Throughout the assessment of the proposal to vary condition 6 of planning application 01/01358/OUT the applicant has not provided a comprehensive sequential assessment in relation to the proposed development and as such the resulting assumptions are inconclusive. Furthermore, SDPHE considers that more flexibility could be demonstrated together with giving consideration to disaggregation. If neither can be viably pursued, fully evidenced justification is required for each.

5.7.2 Furthermore, given the percentage of floorspace likely to be occupied by non-bulky goods, all of which could be purchased from existing shops in the town centre, SDPHE considers that the proposal would result in expenditure leakage from the town centre which would subsequently and unacceptably impact upon its viability and vitality in direct contrast with PPS4. The application is therefore recommended for refusal.

6. Recommendation

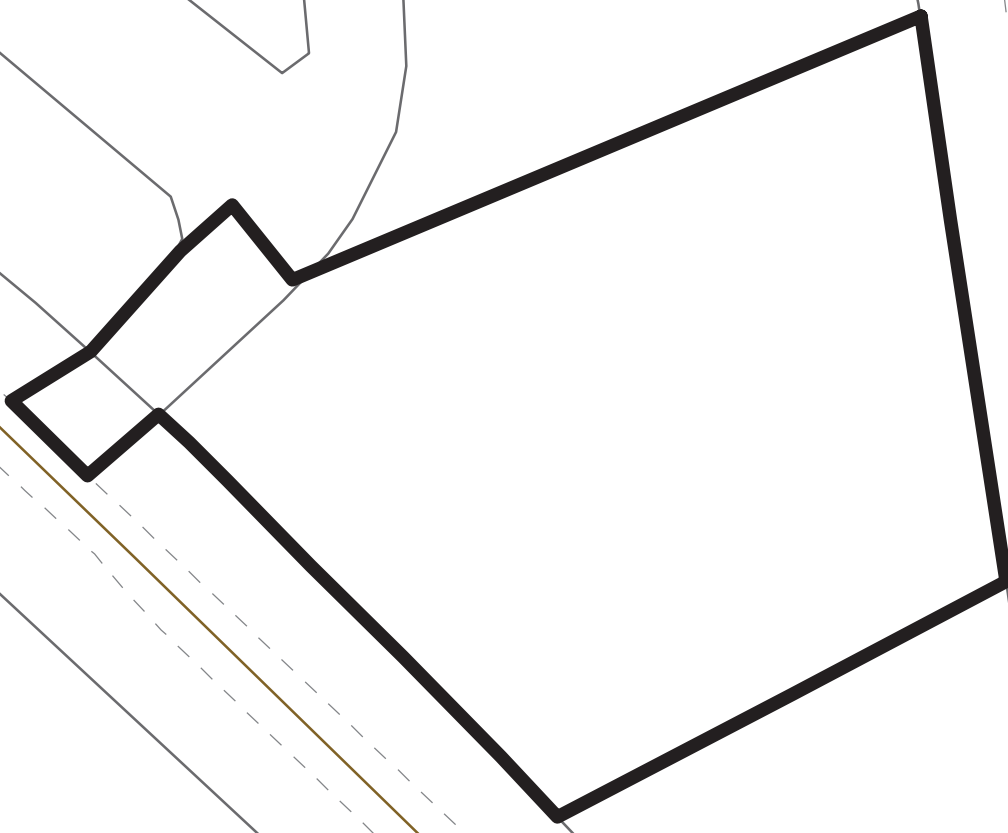
Refusal; for the following reason(s):

The Council considers that the application for the variation of condition 6 of 01/01358/OUT to allow a range of non-bulky goods to be sold from an out-of-centre location is unacceptable as the applicant has not demonstrated that all sequentially preferable sites in the town centre or edge-of-centre have been thoroughly assessed as being unavailable, unsuitable or not viable before considering the proposed out-of-centre location. Furthermore no clear justification for the lack of flexibility in terms of scale, format, car parking or disaggregation has been demonstrated. In addition, and based on the information available to the Local Planning Authority it is considered that the proposal, if approved, would be detrimental to the vitality and viability of the town centre insofar as it would have an adverse impact upon investment in the future provision of comparison floor space and upon existing retailers within the town centre, which would potentially reduce the range of shops provided, reducing the sustainability of the town centre and disadvantaging less mobile social groups leading to increased social exclusion. For these reasons, the application is considered to be contrary to PPS4: Planning for Sustainable Economic Growth, Policy TC2 of the South East Plan and Policies S1 and S2 of the non-statutory Cherwell Local Plan.

CONTACT OFFICER: Jane Dunkin

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Stables

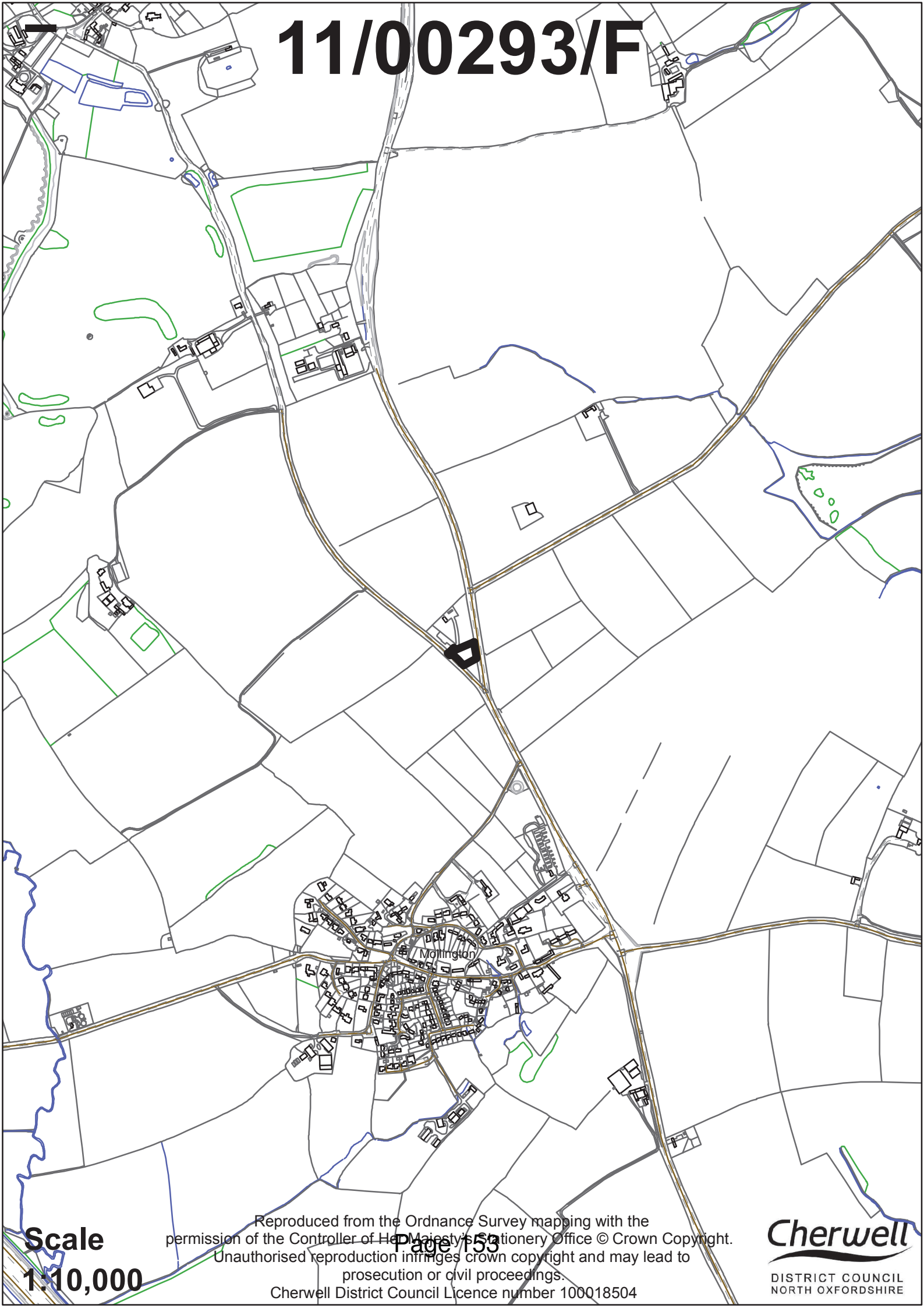


Scale
1:500

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NORTH OXFORDSHIRE

11/00293/F



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Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Application No: 11/00293/F	Ward: Cropredy	Date Valid: 09 March 2011
Applicant:	Mr James Doran	
Site Address:	Corner Meadow, Farnborough Road, Mollington, Banbury	

Proposal: Additional mobile home with associated caravans

1. Site Description and Proposal

- 1.1 The site forms a small parcel of land (roughly 1500sqm) within the wider site known as Corner Meadow which is located immediately to the north of the junction between Farnborough Road and A423 Southam Road, approximately 600m north of the village of Mollington. Corner Meadow as a whole forms a triangular shaped parcel of land containing a small wooded area on the southern boundary. Access to the site is via an existing gateway from Farnborough Road. Planning Permission was granted within the red line for the site currently being assessed for a change of use from paddock to accommodate an additional mobile home and two associated caravans in 2010 (application 10/01610/F refers).
- 1.2 As planning permission has already been granted for a change of use of the land to which this application relates, this application seeks consent for the siting only of an additional mobile home and two associated caravans.

2. Application Publicity

- 2.1 The application has been advertised by way of a site notice and a press notice. The final date for comment was 07 April 2011.
- 2.2 Eight letters of representation have been received which are summarized below (see Public Access for full content of each):
- 2.3
- First application only passed at appeal – indicating major concerns
 - Conditions and enforcement action to be complied with
 - Parish Council to be kept up to date with all progress
 - Strongly against and it is assumed that this application is not for Mr Doran's family
 - Should not be allowed – there are sufficient vans and mobile homes on this site
 - Site unsuitable for residential development
 - Highway safety
 - Area of high landscape value damaged by further units
 - Conditions set by inspector have not been met
 - Inspector didn't give unlimited consent – restricted to three
 - Concerns re waste water and sewerage
 - No explanation as to why extra accommodation is required
 - Site should be restricted to current size

- Normal planning considerations previously put to one side in favour of well being of Doran family – should be no more exceptions
- Other gypsy sites established since the original consent?
- No advert in press
- Site not big enough for existing residents
- Children playing and loose dogs
- Already more caravans than original planning app
- significant number of large commercial vehicles using the site
- We object to this planning application on the basis of blatant disregard to conditions set on previous applications and the ineptitude of the council to see they are met or even concerning themselves with recommendations made by the inspector.

3. Consultations

- 3.1 **Mollington Parish Council:** has not commented directly in relation to the proposal however a letter has been received which raises concern about the Council's approach to planning applications on the site, enforcement issues and the status of the land.
- 3.2 **Local Highway Authority:** In view of the history of the site a recommendation of refusal would be not be sustainable. H.A. therefore offers no objections to the application subject to a condition securing the provision of an access as per the previous application and the provision of parking spaces.
- 3.3 **Head of Planning Policy and Economic Development** raises no planning policy objection to the development of an additional pitch having given consideration to the planning history for the site, the Housing Act 2004, the ODPM Circular 1/2006, the current provision for gypsy accommodation across the district, the Gypsy and Traveller Accommodation Needs Assessment (GTAA, an Examination in Public (EiP) into accommodation provision for the travelling communities, the latest Government Guidance and the DCLG Good Practice Guide on designing Gypsy and Traveller sites.
- 3.4 **Anti Social Behaviour Manager:** no objections however recommends that the public sector licensing team be consulted. NB this was carried out on 10.05.11 therefore the consultation period expires on 24 May 2011.
- 3.5 **Head of Building Control and Engineering Services:** has no comments to make
- 3.6 **Thames Water** raises no objections in relation to the water or sewerage infrastructure

4. Relevant Planning Policies and Guidance

- 4.1 Planning Policy Statement 3: Housing
 Adopted Cherwell Local Plan 1996 – Policy C13 C28
 South East Plan 2009 – Policy C4 and CC6
 ODPM Circular 01/2006

5. Appraisal

5.1 Main Planning Considerations

- 5.1.1 The main issues to consider in the determination of this application are as follows:
- Planning History
 - Principle of additional gypsy pitches
 - Highway Safety
 - Visual Amenity/Landscape Impact
 - Residential Amenity

Each of these matters will be considered in turn.

5.2 Planning History

- 5.2.1 Planning permission was originally granted following an appeal for the change of use of the land to use as a residential caravan site for one gypsy family with a total of up to three caravans (app 08/00604 refers), which related to a parcel of land to the north of the current site in question. In considering the proposal the Inspector concluded that:

- 5.2.2 'the development would not harm highway safety and that the site would be acceptable in sustainability terms. I have identified limited harm to the character and appearance of the surrounding area but consider that the impacts could be mitigated by the imposition of conditions. Notwithstanding the small element of visual harm arising from the development there are compelling factors in favour of the development arising from the need for gypsy sites in the area and the lack of available alternative sites. I also give some weight to the educational needs of the children living on the site.'

- 5.2.3 It was therefore identified that there was a need for additional gypsy accommodation at that time within the District that was not being provided.

- 5.2.4 Application 09/00622/F granted planning permission for the change of use of the same parcel of land (although slightly larger in area) to use as a residential caravan site for two gypsy families with a total of up to six caravans.

- 5.2.5 As the Inspector at the time of the preceding appeal had concluded, the development considered under 09/00622/F was not considered to be harmful and there was an existing need for gypsy sites in the district, as such the application was accepted.

- 5.2.6 Application 10/01610/F granted planning permission for a change of use of a separate parcel of land to the south of the site relating to the preceding applications to allow the siting of one mobile caravan and two touring caravans in 2010 (10/01610/F refers).

- 5.2.7 The advice from the head of Planning Policy and Economic Development in

relation to this application was that the latest advice from government at that time was that it will be for the Local Planning Authority to decide on the level of need for further gypsy and traveler pitched. At the time of application 10/01610/F the Head of Planning Policy and Economic Development advised that the Council would not dispute that there is a need for further pitched and based on the history of the wider site and the Inspector's decision, it was considered to be a suitable location for a further pitch.

- 5.2.8 The current application seeks to site an additional mobile home together with two touring caravans on the same land as application 10/01610/F (in relation to which a change of use for the siting of a mobile home has already been granted planning permission).

5.3 Principle of Additional Gypsy Pitches

- 5.3.1 As referred to above, the Head of Planning Policy and Economic Development recognises that, based on the planning history of the Corner meadow site, it is an accepted location for gypsies and travellers.

- 5.3.2 Whilst reference is made by the Head of Planning Policy and Economic Development to a number of ways in which the need for gypsy pitches has been calculated via the GTAA (12 pitches), Circular 01/2006, Oxfordshire Partnership Work (17 pitches) and an EiP into accommodation for travelling communities in 2010 (15 pitches), there remains to be a net loss of six pitches. Furthermore, the latest advice is that the Regional Strategy and Circular 01/2006 are to be revoked.

- 5.3.3 In light of this, the latest Government advice is that;

“Local councils are best placed to assess the needs of travellers. The abolition of Regional Strategies means that local authorities will be responsible for determining the right level of site provision, reflecting local need and historic demand, and for bringing forward land in DPDs. They should continue to do this in line with current policy. Gypsy and Traveller Accommodation Assessments (GTAAAs) have been undertaken by all local authorities and if local authorities decide to review the levels of provision these assessments will form a good starting point. However, local authorities are not bound by them. We will review relevant regulations and guidance on this matter in due course.”

- 5.3.4 Given this latest advice, the Head of planning Policy and Economic Development advises that at the time of writing, it is not known whether a new GTAA will be prepared or when new regulations and guidance will be published. However, the net loss of 6 pitches [within the District] since 2006 in itself suggests a need for additional pitches to be provided leaving aside the need to meet future needs.

- 5.3.5 As previously concluded therefore, based on the conclusions reached by the Planning Inspector for the 2008 application and bearing in mind the Head of

Planning Policy and Economic Development's advice in relation to need, SDPHE is satisfied that there remains to be a need for gypsy pitches within the District. The Inspector concluded that such development would not be harmful to highway safety and that the site is sustainably located. For these reasons, it is concluded that the use of the site for an additional gypsy pitch is acceptable in principle.

5.4 Highway Safety

5.4.1 The Inspector for the 2008 appeal concluded that, in relation to the assessment of the three caravans at that time, the proposal would not give rise to any highway safety concerns.

5.4.2 In light of this conclusion, the Local Highway Authority does not consider that it would be sustainable to recommend that the application be refused. It is however pertinent to require the access to be laid out in accordance with the previous plans and to secure two parking spaces in association with the additional caravan.

5.4.3 The conditions recommended by the Local Highway Authority are reasonable in SDPHE's view. Details of the access were submitted to and approved in relation to the conditions attached to 09/00622/F, however the access has not been carried out on site in accordance with the approved details. As the Inspector also required details of the access in relation to 08/00604/F (despite an access existing on the site at the time of the appeal) it would appear that the access was not considered to be to appropriate safety and specification standards. No changes have been made to the access since this time and therefore the access is not in accordance with what was expected in relation to the approved development, therefore a condition which requires the access to be carried out in accordance with previously approved details is reasonable in SDPHE's view. The indication of two parking spaces within the site is also considered to be reasonable to ensure that there is appropriate accommodation for vehicles to be parked clear of the highway.

5.4.4 Subject to the recommended conditions, SDPHE is satisfied that the proposal is appropriate in terms of its impact upon highway safety and convenience in accordance with PPG13 and Policy

5.5 Visual Amenity/Landscape Impact

5.5.1 The wider site is well screened, and adjacent to the area proposed under this application is a thicket of tree planting to the south together with planting along the boundaries of the wider site. Whilst glimpses through some of the boundary treatments are gained of the mobile homes and touring caravans during the winter months, the overall impact on the landscape is not significant. During the summer months, views of caravans would be reduced further.

5.5.2 A landscaping scheme to reinforce, in particular, the eastern hedgeline with the Southam Road has been approved in relation to the 2009 application however this has not been implemented; a matter which is currently being investigated by the Council's Enforcement Team. The site circumstances and the location of the caravans together with the Inspectors consideration of this matter leads SDPHE to conclude that the proposal would not cause undue harm to visual amenity or the wider landscape in accordance with Policies C13 and C28 of the adopted Cherwell Local Plan. It should be noted that a landscaping scheme is not considered to be

necessary in this particular case as the approved landscaping scheme (yet to be implemented) relates to the 2009 application and a wider element of the site.

5.6 Residential Amenity

5.6.1 The proposal would have no impact upon residential amenity by way of loss of light, loss of privacy or by being overbearing given the fact that the nearest neighbours are some distance from the site. The application would not therefore cause undue harm to residential amenity and therefore complies with Policy C30 of the adopted Cherwell Local Plan.

5.7 Third Party Representations

5.7.1 The third party representation (which are both material and non-material considerations) are noted and are addressed in turn below:

5.7.2 Whilst the Council refused the application, the Inspector allowed the appeal and as such this decision carried the most weight.

5.7.3 The fact that there are outstanding conditions and enforcement matters to be complied with does not automatically lead to a subsequent application being refused. The current proposal must be assessed on its planning merits and an appropriate conclusion reached.

5.7.4 The Development Control Team Leader has recently written to the Parish Council to set out the latest position.

5.7.5 None of the previous consents are tied to a particular family, only to the use of the land being for the traveling community only. It would therefore be unreasonable to now tie the site to a particular family.

5.7.6 The assessment of the application concludes that the additional units would not cause material harm therefore the opinion that there are sufficient vans and mobile homes on the site cannot reasonably lead to a reason for refusal.

5.7.7 Residential use has been established on the site as a result of the Inspector's appeal decision.

5.7.8 The Inspector and the Local Highway Authority raised no objections to highway safety subject to conditions relating to access and parking.

5.7.9 The Inspector raised no objections to the impact of the proposal upon the landscape subject to planning condition.

5.7.10 The outstanding planning conditions are being investigated.

5.7.11 The Inspector restricted the original consent to three caravans as that was the proposal before her and what she had based her assessment on. This does not preclude the applicant or others from applying for further units or stop SDPHE from considering that such units are acceptable following a balanced planning assessment.

- 5.8.12 No concerns have been raised by Thames water in relation to waste water and sewerage
- 5.8.13 In assessing additional units for gypsy accommodation on an existing site, a justification is not required, however consideration must be given to need, which has been demonstrated in this case given the shortfall across the District.
- 5.8.14 Restriction on numbers is not considered to be reasonable where additional units would not cause material harm.
- 5.8.15 Whilst the well being of the Doran family formed part of the consideration of the original application, this was not the only reason why the application was considered to be acceptable (see para 5.2.2 above).
- 5.8.16 No other gypsy sites have been established since the original consent. There has been a net loss of 6 pitches since 2006.
- 5.8.17 Under the most recent procedures for advertising planning applications, this application is not one that the Council has a statutory duty to advertise in the local Press. A site notice was posted near to the site on the Farnborough Road.
- 5.8.18 The size of the site is a matter of opinion. It has been concluded that no material harm will be caused by the siting of a further caravan pitch on the site, when considered against planning policy.
- 5.8.19 Children playing and loose dogs are not matters in relation to which an application could be reasonably refused.
- 5.8.20 SDPHE is aware of the unauthorised unit of accommodation and the necessary enforcement investigations are in motion.
- 5.8.21 If a commercial use is being carried out at the site, this is breach of previous conditions and would be controlled by condition 4 below. This is a further matter that is being investigated by the Enforcement Team.
- 5.8.22 Whilst there are some outstanding planning conditions relating to the site, the Council's Enforcement Team have been actively pursuing these matters. It is considered that all recommendation made by the Inspector have been met.
- 5.9 Conclusion
- 5.9.1 The application is acceptable in principle as there is an identified need for further gypsy pitches. The site is considered to be in a sustainable location that would not give rise to any highway safety issues. Furthermore the proposal would not cause unacceptable harm to residential or visual amenity or the character of the wider landscape. For these reasons and the policies listed below, the application is recommended for approval subject to conditions.

6. Recommendation

Approval; subject to the expiry of the consultation period and the following conditions:

1. That the development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

2. The site shall not be occupied by any persons other than gypsies and travellers as defined within paragraph 15 of ODPM Circular 01/2006.

Reason: This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent, in accordance with the advice within ODPM Circular 01/2006.

3. No more than two gypsy pitches (one of which was granted planning permission under 10/01610/F) shall be positioned on the site which shall each include one mobile home and two associated caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be static caravans or mobile homes) shall be stationed on the site.

Reason - In the interests of the visual amenities of the area, to provide an effective screen to the proposed development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

4. No commercial activities shall take place on the land, including the storage of materials and no vehicles over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason - In the interests of the visual amenities of the area and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

5. That unless otherwise stipulated by conditions attached to this permission, the development hereby permitted shall be carried out in strict accordance with the following list of approved plans and documents: A2 plan containing Site Location Plan at a scale of 1:1250 and Site Plan at a scale of 1:200 and Design and Access Statement all received with the application on 23 February 2011.

Reason: To ensure that the development is carried out in a satisfactory manner in accordance with saved policy C28 and C30 of the Adopted Cherwell Local Plan 1996 and policy CC6 of the South East Plan 2009

6. That notwithstanding the approved plans, the access and access gate and associated fencing shall be constructed on site in accordance with Site Location Plan (Scale 1:500) in relation to condition 5 of planning application 09/00622/F.

Reason - In the interests of the visual amenities of the area and highway safety in accordance with Policy C28 of the adopted Cherwell local Plan and PPG13: Transport.

7. That a plan showing a car-parking provision for two spaces to be accommodated within the site, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development, and that such parking facilities shall be laid out, surfaced, drained and completed in accordance with the approved plan before the first occupation of the premises. The car parking spaces shall be retained for the parking of vehicles at all times thereafter.

Reason: In the interests of highway safety, to ensure the provision of off-street car parking and to comply with Government advice in PPG13: Transport and Policy T4 of the South East Plan 2009

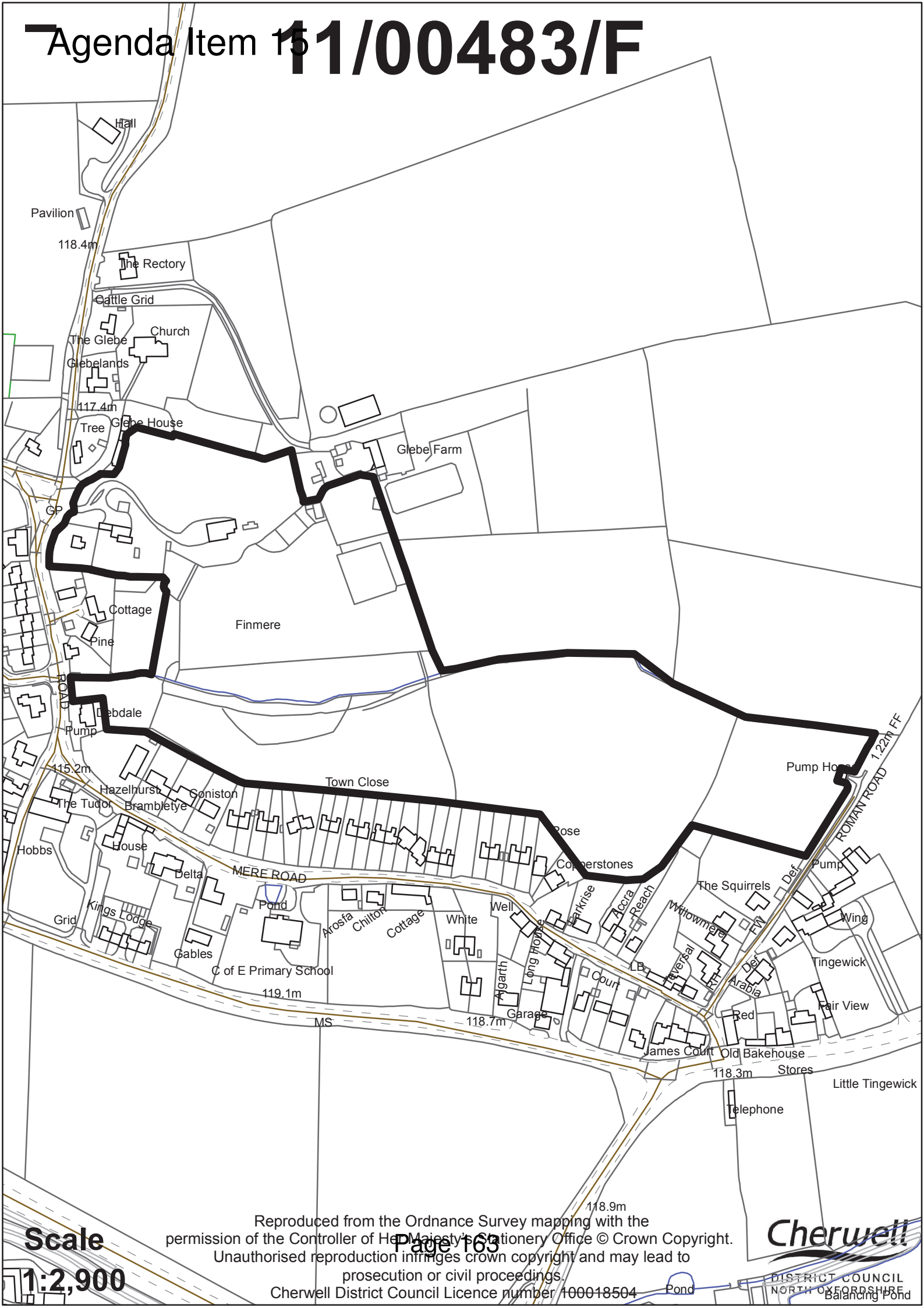
SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

The Council, as local planning authority, has determined this application in accordance with the development plan, unless material considerations indicated otherwise. Incorporating and adhering to the above conditions, the development is considered to be acceptable on its planning merits as the proposed development is considered to be acceptable in principle and would not give rise to any unacceptable risk to highway safety. Furthermore it is considered to be acceptable in terms of its impact upon residential amenity, visual amenity and its wider landscape impact. As such the proposal is in accordance with PPS3: Housing. PPG13: Transport, Policies C4 and CC6 of the South East Plan 2009 and saved policies C13, C28 and C30 of the Adopted Cherwell Local Plan 1996. For the reasons given and having regard to all other matters raised including third party representations, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions as set out above.

CONTACT OFFICER: Jane Dunkin

TELEPHONE NO: 01295 221815

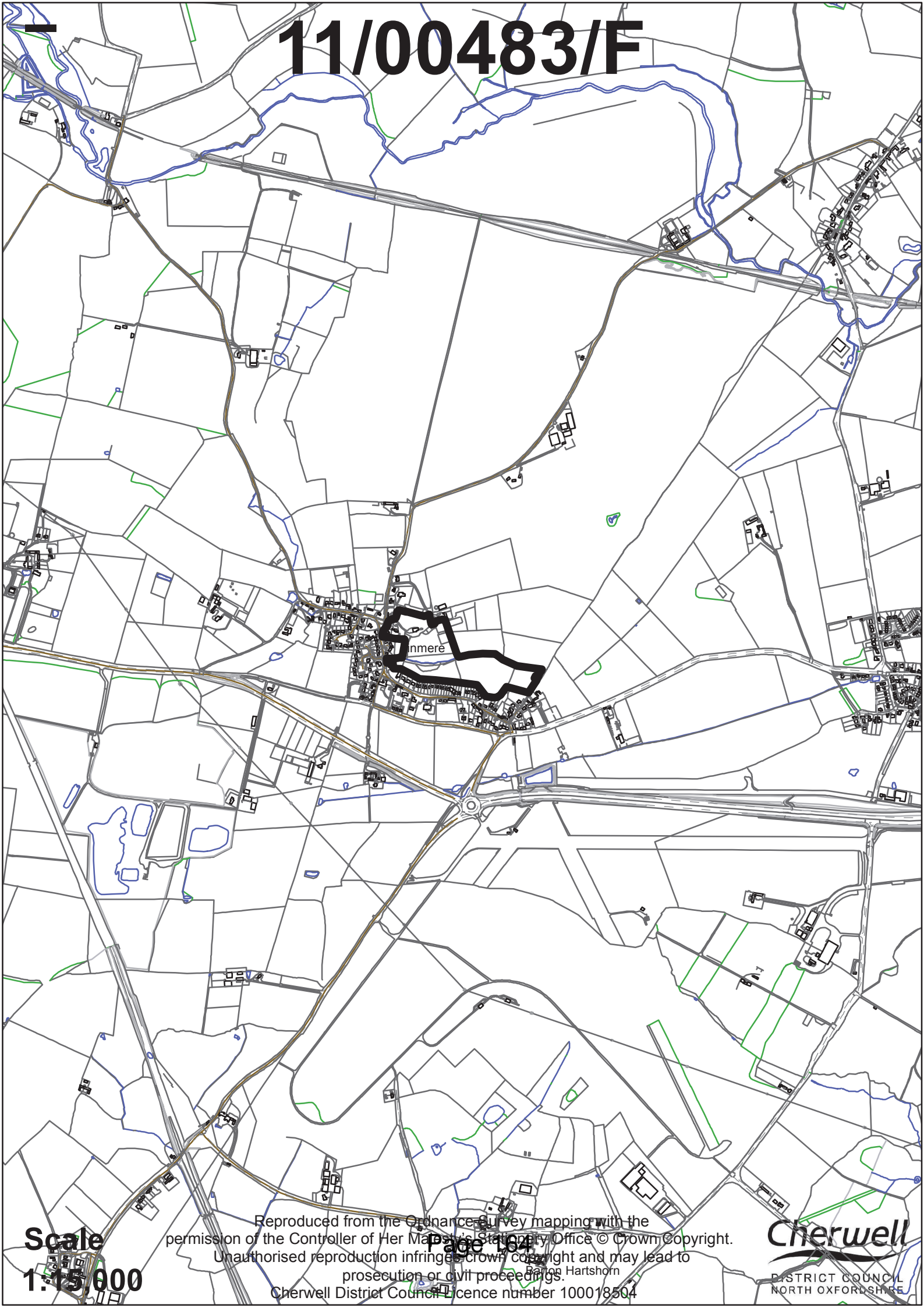
Agenda Item 15 **11/00483/F**



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11/00483/F



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Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

Application No: 11/00483/F	Ward: Fringford	Date Valid: 22/03/11
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Applicant: Mr Charlie Grimston, The Old Rectory, Finmere

Site Address: The Old Rectory, Mere Road, Finmere, Buckingham

Proposal: Temporary change of use for a one day public charity fund raising event (ticketed) including marquees, toilets, bandstand and associated facilities. Application to include set up and take down – total three days.

1. Site Description and Proposal

1.1 Site

This 9.2 hectare site abuts the village of Finmere on its east side and contains the applicant's dwelling house and the grounds in the northern part and includes agricultural land towards the south, the boundary of which is formed by the rear gardens to properties along Mere Road/Town Close. The house is a former 18th century vicarage sited within a landscaped garden. There is a haha to the south of the property which clearly defines the boundary to the rest of the agricultural land which is currently laid to pasture and grazed by horses. There is a linear copse which severs the middle of the site where the land slopes to the south. The site is currently accessed from the west along a drive to the property at the top end of Valley Road. There is also another less formal gated access directly off Valley Road straight into the field.

1.2 There are listed buildings in proximity to the site to the north (St Michael's Church and the grounds) and Glebe House abuts the site in the northern corner. A public footpath runs near to the northern boundary but none are within the site. The site is not in a Conservation Area. There are no other notable planning constraints.

1.3 Proposal

This application seeks temporary consent to erect a bandstand, marquees, toilets, lay out parking areas and other associated facilities in order to hold a one day public fund raising event in aid of the Colonel's Fund Scots Guards (a registered charity). The event is proposed to be over one day but require 'set up' and 'break down' days either side. The event is due to take place on Saturday 25 June 2011 with a maximum ticket attendance of 1000.

1.4 Site plan drawing G3841 SU01 shows how the site will be laid out and also indicates the curtilage of the dwelling house. Within that residential curtilage is proposed to be:

- the organisers private marquee (15m x 12m) near the northern corner
- the band stand marquee (12m x 6m) just to the south of the house
- toilet block (6.4m x 2.5m)

Within the agricultural land:

- viewing area between the copse and the house
- private parking area close to gate 1 (the principal access point)
- public parking area to the east near to gate 2
- toilet block (6.4m x 2.5m)

1.5 **Relevant Planning History**

07/02631/F – This application was withdrawn before a decision was made but has been referred to in other correspondence. It was proposed to construct a wedding and events venue to include dance hall, marquee and ancillary accommodation including car parking within the grounds of The Old Rectory.

2. Application Publicity

2.1 The application has been advertised by site notices placed at the top main entrance near the triangular green area, next to the middle entrance (Gate 1) on Valley Road and at the junction with Mere Lane close to the public house. There has also been a press notice. The final date for comment was 12 May 2011. At the time of compiling this report the following comments had been received:

One letter of objection from a local resident on grounds of:

- harmful impact caused by a large volume of traffic on an unsuitable rural road network
- public nuisance associated with traffic congestion
- loss of environmental amenity
- loss of residential amenity
- likely establishment of precedent

3. Consultations

3.1 Whilst all the responses to the consultation exercise are detailed on the core file, available electronically via our website, a summary of the submissions received is provided below:

3.2 Finmere Parish Council: **Object**, on grounds of highway safety

3.3 Oxfordshire County Council (Highways): **Object** and recommend refusal.

3.4 CDC Anti-Social Behaviour Manager: **No objection** subject to this being a one day event and the operation hours should be restricted.

3.5 Police Architectural Liaison Officer: Comments awaited

4. Policy Considerations

National Policy
Guidance

- PPS1 - Delivering Sustainable Development
- PPS5 – Planning for the Historic Environment
- PPS7 – Sustainable Development in Rural Areas
- PPG13 – Transport

South East Plan
2009 Policies

- Cross Cutting – CC1 & CC6 – Sustainable Development & Sustainable Communities & Character of the Environment
- Transport - T1 & T4 – management, investment and parking
- Countryside & Landscape Management - C4 & C6 - Landscape and countryside management and countryside access & rights of way management
- Management of the Built Environment - BE1 & BE6 - management

for an urban renaissance and of the historic environment

- Natural Resource Management – NRM10 - Noise

Adopted Cherwell
Local Plan 1996
saved policies

- C7 – Landscape conservation
- C8 – Sporadic development in the open countryside
- C13 – Areas of High Landscape Value
- C27 – Historic settlement pattern
- C28 – Design, layout etc standards
- C31 – Incompatible land uses
- C33 – Undeveloped gaps of historic value
- ENV1 – Pollution Control

5. Appraisal

5.1 Principle of the development

Class B of Part 4 of the Town and Country Planning (General Permitted Development) Order 2008 and its subsequent amendments gives permitted development rights for the use of any land for a period of 28 days in one calendar year but there are conditions attached to these rights. The most relevant one to this case states that the land in question shall not comprise a building or be within the curtilage of a building.

It follows that the land which falls within the curtilage of the Old Rectory does not benefit from permitted development rights so permission is required for the erection of the marquee, one of the toilet blocks and the bandstand. The rest of the land is an agricultural field and enjoys the permitted development rights laid out under the Order. To this end, the parking areas, a toilet block and viewing area south of the copse are outside the remit of planning control but because the relationship between the two is so interlinked, the applicant has elected to include the 'field' element within the application.

It is noteworthy that if all the development within this application were to be situated in the field then planning consent would not be required at all and the consequences of that would be that no controls could be placed on the day's events.

The proposed layout has been chosen because of the natural features of the site. The haha is a natural raised platform for the bandstand and the central copse acts as an effective screen from views from the village and a natural noise barrier.

5.2 Effect on the Heritage Assets

PPS5 advises on how applications, that would affect heritage assets should be considered and in this case, the settings of the listed buildings is of relevance. It should be noted that the overarching aim is that the 'historic environment and its heritage assets should be conserved'. A key objective is 'to contribute to our knowledge and understanding of our past'. The guidance makes it clear that if a proposal would be harmful to a listed building setting then it should be weighed against any wider public interest and that the proposal should be fully justified. It is equally clear that there is no intention that areas should remain 'frozen in time' and only where there is harm that cannot be outweighed should consent be refused.

With regards the marquee, this is to be situated close to the northern corner just

south of the listed properties Church and Glebe House. The landscaping on that boundary corner is high level and mature so views into and out of the site at this point are obscured. I do not consider that their settings would be harmed particularly as this is a temporary arrangement. Other structures are too far away to have any impact.

5.3 Impact on the character and appearance of the rural landscape

The site is within the countryside and its present character and appearance is greatly valued. PPS7 advises that the countryside be protected for its own sake and current policies in the local plan (Policies C7 and C8) seek to retain tight control over all development proposals in the countryside. This site would be very visible from the public domain of the highways and public footpath network.

That part of the site under the remit of this policy is within the field so as a temporary arrangement (under permitted development rights) it is concluded that there would be no harm to surrounding countryside as a result of this development, the majority of which is proposed to be used for parking.

5.4 Residential Amenity

Given the distance from other properties and the existing boundary treatments there would be no harm caused to neighbouring properties in terms of overdomination, overshadowing, loss of light or loss of privacy. The land closest to the majority of neighbouring properties is intended for parking and there is only one toilet block which is proposed to back onto Debdale. Whilst the view is held that this position is acceptable it could easily be re-sited.

It is considered that the residential amenity issue in this case relates more to the matter of whether or not the whole use is compatible close to residential areas in terms of general amenity i.e. noise created directly from the event and the impact of the comings and goings from the site.

In consultation with the Council's Anti-Social Behaviour Manager, on the basis that the musical entertainment provided is of limited duration and is planned to finish at a reasonable hour this is no objection to the provision of the temporary infrastructure to facilitate the activity. This judgement takes account of the fact that the event will be a 'one off'.

It is noted from the event management plan that it is proposed to open the site to commence the build in advance of the time period specified in this application. It is also common place for structures such as marquees to be erected on a 'just in time' basis resulting in building work being carried out at times which would be considered outside normal working hours. To prevent annoyance being caused by this activity it would be reasonable to impose a planning condition restricting the hours when construction activities can be audible beyond the site boundary to 08:00 - 20:00 hrs on any day.

It is noteworthy that the Licensing Sub-Committee on 14 April 2011 granted a premises licence for this event. That Committee considers, inter alia, the potential for public nuisance in the form of noise.

5.5 Highway Safety

There is no doubt that the local highway network is of a rural nature, typically narrow with poor forward visibility at bends and without separate provision for

pedestrians. The proposal suggests there would be approximately 1000 visitors to the event that would arrive by car, except for some local residents who would be likely to walk. The County Council, as Highway Authority considers that such levels of traffic on this rural part of the highway network would be detrimental to the safety and convenience of other highway users. Safety issues would be further exacerbated by pedestrians, en-route to/from the various car parks, sharing the highway with these increased vehicle flows.

The County Council has further noted the lack of information and appropriate mitigation measures contained in the Traffic Plan. Only the outer car park is shown on the plans and the contingency parking is proposed on the verges of Sandpit Hill. The County Council cannot concur with the applicant's view that there would not be any need for traffic management measures on the local highway network.

Given the comments received from the County Council, your officers have concerns over this application because it will lead to increased traffic on an unsuitable local highway network and will little accessibility to other modes of transport that would make it a more sustainable location. The proposal fails the objectives of PPG13 as accessibility is exclusive to car users, other than for local residents. The Traffic Plan rules out links to rail and coach/bus services. There is no justification given for the proposed event and there is no evidence of a sequential approach to finding an appropriate alternative location.

5.7 Conclusion

Development within the field benefits from permitted development rights for a temporary period of up to 28 days in any one calendar year. The development proposed within the curtilage of the house does not. This planning application affects the whole site and should be considered alongside all the identified issues and it is clear from the guidance offered by the County Council, that it fails on grounds of highway safety and sustainability. To this end, it is recommended that planning consent be refused.

It should be noted that if the event were to take place wholly within the field then it could go ahead without the need for planning permission and, it follows, without the ability for this Authority to impose any conditions which would ordinarily be sought i.e. relating to activity times and precise sitings of the structures.

6. Recommendation

Refusal, on the following grounds:

The proposal would increase the use of a rural part of the local highway network to the detriment of the safety and convenience of highway users, and it would result in a large number of pedestrians and motor vehicles sharing a rural part of the local highway network where there is potential for conflict to the detriment of highway safety. Further, the site and event represents an unsustainable location as its accessibility is highly dependent upon use of the private motor car which is unsustainable. The proposal is, therefore, contrary to central government guidance contained in PPG13 and Policy T8 of the South East Plan 2009.

CONTACT OFFICER: Rebecca Horley

TELEPHONE NO: 01295 221837

Planning Committee

Report of the Head of Development Control and Major Developments

19 May 2011

Tree Preservation Order No 05/2011 4 Gulley Row, Merton, OX25 2UH

PURPOSE OF REPORT

The purpose of this report is to advise Members of objections received to the above-mentioned Tree Preservation Order and to seek a decision on whether or not to confirm the Order.

This report is public

Recommendations

The meeting is recommended:

- (1) That Tree Preservation Order (No. 05/2011) be confirmed without modification in the interest of public amenity.

Executive Summary

Introduction

- 1.1 I was contacted by a member of the public who was concerned that their neighbour was considering employing an arboriculturalist to either fell a large tree or substantially prune the same tree which was located in the front garden of the above property. The resulting site visit and evaluation of the tree undertaken by myself indicated it's suitability for a Tree Preservation Order.

Proposals

- 1.2 The tree is not located within a conservation area and is considered to be under a potential level of threat. It is considered to have a high level of amenity value with no current level of legal protection and it is therefore proposed that the tree become subject of a Tree Preservation Order without modification.

Conclusion

Members are asked to confirm the above Tree Preservation Order under the following powers:

Statutory powers are provided through :

Section 198 Town and Country Planning Act 1990.

Town and Country Planning (Trees) Regulations 1999

The Scheme of Reference and Delegation authorises the Head of Development Control and Major Developments to make Tree Preservation Orders under the provisions of *Section 201 of the Town and Country Planning Act 1990*, subject to there being reason to believe that the tree in question is under imminent threat and that its retention is expedient in the interests of amenity.

The power to confirm Tree Preservation Orders remains with the Planning Committee.

- 1.3 The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments and made on 28th February 2011. The statutory objection period has now expired and one objection was received to the Order.

Background Information

- 2.1 The Order relates to 1 No walnut (*Juglans regia*) located within the boundary and front garden of No 4 Gulley Row, Merton (see plan attached as Annex 1).
- 2.2 The tree was assessed by myself on the 22/02/2011 and a TEMPO evaluation was undertaken (see Annex 2). The results of the evaluation provided a total score of 14 out of 20 indicating that a TPO on this tree would be considered defensible.
- 2.3 The Tree Preservation Order was made on the 28th February 2011 as a result of public and local authority concerns regarding the future management of a large, unprotected tree.
- 2.4 I then undertook a site visit with the homeowners, Mr & Mrs Cooper during which I explained the reasons behind the TPO, the reasons and implications of TPO legislation and the procedures required for providing objections to the provisional TPO and for applying for works in the future.
- 2.5 An objection to the TPO was submitted by Mr & Mrs Cooper and received on the 18th March 2011.
- 2.6 On the 18th of March an application for works on the walnut tree was also submitted by Mr & Mrs Cooper. The reasons stated were to prune or remove identified branches in order to provide adequate clearances from adjacent utility lines and buildings. Full consent was granted for this work by Cherwell

District Council.

2.7 The objection from Mr & Mrs Cooper states that:

- a) They have cared for and maintained the tree for the last 20 years.
- b) Despite obtaining a quotation to do so, they had no intention of removing the tree.
- c) They believe the tree to have limited amenity value as it can only be seen from a small number of houses and the main road through the village.
- d) The tree offers no screening value for the property.
- e) The tree is too large for its location and has outgrown its position. It blocks light and there is a risk of subsidence damage occurring if retained.
- f) It has significant impact on neighbours due to historical and current conflict with utility lines.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The walnut tree identified as T1 is a large, mature specimen with no significant defects. The tree is displaying historical pruning wounds around the main trunk area, with these branches most likely removed in order to remove a nuisance issue.
- 3.2 The tree is located in the front garden of No 4 Gulley Row and is a prominent individual tree within the street scene. The crown of the tree is also visible outside the village from the approach road to the west.
- 3.3 I believe the tree to have a significant level of amenity value which provides a visual benefit for at least 20 No residential properties plus vehicular and pedestrian traffic passing by the property and vehicular traffic approaching the village from the west.
- 3.4 The tree provides a level of screening for the property and, due to its location on the north side of the property, it should have a minimal impact on restricting light levels into the property.
- 3.5 There is currently no evidence of structural damage on No 4 Gulley Row or adjacent properties. I have explained to Mr & Mrs Cooper that should this ever be the case, providing sufficient evidence is submitted which implicates the tree as the causal agent, then CDC will most likely grant consent to remove the tree.
- 3.6 During my site visits to the property I noticed that there were a number of secondary branches either in direct contact with the utility lines which

pass through the crown or in contact or close proximity to adjacent residential buildings. After discussing these issues with the owners. It was agreed that an application should be submitted containing specific and agreed proposals recommended in order to remove these nuisance issues. The application was received and full consent was granted.

3.7 I believe the tree to be a valuable feature in the local street scene and with no significant structural or physiological defects, should be retained and protected with a TPO. The nuisance issues which have arisen are as of a direct result of a lapse in management and such nuisances may be avoided in the future by simply bringing the tree back under good, regular arboricultural management. Although I believe the risks to be low, should there be a future risk of direct damage to the property then CDC will respond appropriately as and when required.

3.8 The following options have been identified. The approach in the recommendations is believed to be the best way forward

- | | |
|-------------------|--|
| Option One | Confirm the TPO without modification, retain and manage the tree as appropriate. |
| Option Two | Do not confirm the TPO and leave the tree with no legal protection |

Consultations

[Consultee] None

Implications

- | | |
|-------------------------|--|
| Financial: | The cost of this Tree Preservation Order can be met from approved Estimates.
Comments checked by E.Meadows, (Service Accountant) 01295 221552 |
| Legal: | The Committee should confirm the Order if it is in the interests of amenity to preserve the tree. The property owner has not produced an expert's report to support his objections.
Comments checked by N. Bell, Solicitor (01295 221687) |
| Risk Management: | The position relating to risk assessment is that the existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such trees are structurally sound and pose no danger |

to passers by and/or adjacent property. The TPO legislation does contain provisions relating to payment of compensation by the Local Planning Authority in certain circumstances, but these relate to refusal of applications to carry out works under the Order, and no compensation is payable for loss or damage occurring before an application is made.

Comments checked by C. Taylor, Corporate Strategy and Performance Manager (01295 221563)

[Other Implications] N/A

Wards Affected

Merton

Document Information

Appendix No	Title
Appendix A	Site Map
Appendix B	Copy of letter of Objection
Appendix C	Tree Evaluation Method for Preservation Orders (TEMPO)
Background Papers	
[Click here and insert title of Background Papers]	
Report Author	Jon Brewin, Arboricultural Officer (South)
Contact Information	01295 221708 jon.brewin@Cherwell-dc.gov.uk



18 MAR 2011

12/03/11

Ref: Tree Preservation Order (No.5) 2011.
Walnut tree at 4 Gulley Row, Merton.

Dear Sir,

We write to raise our objection to the temporary TPO placed on the walnut tree in the Garden of 4 Gulley Row, Merton. We wish to challenge the view that a TPO is necessary and ask that our views and evidence be considered when making any further decisions regarding this matter.

We have been owners of the property where this tree stands for the past 20 years. During this time we have maintained and cared for the said tree without the need or desire for a TPO. This can be confirmed by inspection of the tree. We have undertaken various amounts of tree surgery to maintain the tree. The council has been telephoned on each occasion and we have been told we have no restrictions.

Our plans were to have extensive work carried out on the tree in March whilst the tree was dormant and a number of tree surgeons had been asked to quote for various amounts of work. Part of the quote was to enquire the cost of felling the tree, as it is prudent of us to ensure we have sufficient funds to do this if necessary and we had not enquired about this for a considerable number of years. Unfortunately a neighbour without speaking to us raised the need for an immediate TPO. Of course no work can be carried out on this tree without giving neighbours significant notice as the power supply to homes needs to be cut off for a considerable number of hours which we arrange via the electricity board. No work had been agreed.

We wish to challenge the TPO on the following grounds and question the amenity value: We believe the tree offers limited amenity value:

- There is limited visibility of the tree due to the nature of the village layout, one long straight road through the village with houses either side. The tree is set back from the road and is partially covered by a large hedgerow. The tree is only partially visible to a few houses in the village (Gulley row and houses opposite)
- The tree offers no value of screening
- The tree is too large for a small cottage garden and has even with regular pruning has outgrown its surroundings
- It has significant impact on the wider community due its proximity to both electrical and telephone services

There are 9 telephone wires running through the branches of the tree to all the houses in Gulley Row. The telephone lines are broken on a regular basis by the branches of the tree. My own telephone wire has been broken twice in the last few years. Also the telephone wire to [REDACTED] (please see attached letter of complaint from [REDACTED] dated 24/11/10).

When the wires are broken it represents a considerable Health & safety risk due to the remoteness of the village and therefore the need to have a reliable telephone line is essential. Also most residents of Gulley Row have internet access and some work from home. BT have tried to alleviate the problem by installing a longer telegraph pole but I think the limit of extending the telegraph pole has been reached.

There are also 3 three electrical wires running through the branches of the tree. These have been broken in the past by the branches of the tree causing considerable inconvenience to all the houses in the road. This is also a serious health and safety risk as a result of one breakage caused a fire, which resulted in the local fire brigade being called. There is also the danger of electrocution from broken electrical wires. (please see attached letter of complaint from [REDACTED] dated 24/11/10).

The tree is too big for a small cottage garden. The tree is only 3 metres from the house and the height of the tree now greatly exceeds the height of the house. The branches extend over the roof of the house and caused damage to the roof tiles. In the summer the foliage is so severe that it blocks a considerable amount of daylight coming into the house. It drains all the surrounding area of light and nutrients for other plants.

Because of the size of the tree the root system must be of considerable size. If the roots under ground are as big as the branches above they must extend under the houses. To date there has been no sign of any damage or subsidence due to the root system but this is causing considerable concern for all our neighbours (please see attached letter of complaint from [REDACTED] dated 24/11/10).

In summary the tree is too big for a small cottage garden. It is a health & safety risk due to the issue of broken telephone and electrical cables. It offers limited amenity value for the village and has caused concern for my immediate neighbours see attached letters from [REDACTED] dated 24/11/10 and 11/02/11. A TPO only delays our ability to prune the tree as and when necessary.

We have met with Mr. Brewin Arboricultural Officer and have discussed our needs to have the tree pruned to alleviate our concerns in the near future (we are awaiting planning permission). We believe a TPO will delay any further necessary work in the coming years.

We look forward to hearing from you.

Yours sincerely,

[REDACTED]
[REDACTED]

Redacted

Redacted

Detached

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

SURVEY DATA SHEET & DECISION GUIDE (Refer to guidance note for definitions)

Surveyor: J.BREWIN Date: 22/02/11 Species: WALNUT
 Location: 4 GULLEY ROW, MERTON
 TPO Ref (if applicable): 05/2011 Tree/Group No: T1 Owner (if known): _____

Part 1: Amenity assessment

a) Condition & suitability for TPO (*Relates to existing context and is intended to apply to severe irremediable defects only*)

<input checked="" type="checkbox"/>	5) Good Highly suitable	Notes No significant defects. Primary limb pruning wounds on main stem.
<input type="checkbox"/>	3) Fair Suitable	
<input type="checkbox"/>	1) Poor Unlikely to be suitable	
<input type="checkbox"/>	0) Dead Unsuitable	
<input type="checkbox"/>	0) Dying/dangerous* Unsuitable	
Sub Total		5

b) Retention span (in years) & suitability for TPO (*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality*)

<input type="checkbox"/>	5) 100+ Highly suitable	Notes Mature specimen
<input type="checkbox"/>	4) 40-100 Very suitable	
<input checked="" type="checkbox"/>	2) 20-40 Suitable	
<input type="checkbox"/>	1) 10-20 Just suitable	
<input type="checkbox"/>	0) <10* Unsuitable	
Sub Total		2

c) Relative public visibility & suitability for TPO - *Consider realistic potential for future visibility with changed land use*

<input type="checkbox"/>	5) Very large trees with some visibility, or prominent large trees Highly suitable	Notes Front garden adjacent to main road.
<input checked="" type="checkbox"/>	4) Large trees, or medium trees clearly visible to the public Suitable	
<input type="checkbox"/>	3) Medium trees, or large trees with limited view only Suitable	
<input type="checkbox"/>	2) Young, small trees, or medium/large trees visible only with difficulty Barely suitable	
<input type="checkbox"/>	1) Trees not visible to the public, regardless of size Probably unsuitable	
Sub Total		4

d) Other factors - *Trees must have accrued 7 or more points (with no zero score) to qualify*

<input type="checkbox"/>	5) Principal components of arboricultural features, or veteran trees	Notes
<input type="checkbox"/>	4) Tree groups, or members of groups important for their cohesion	
<input type="checkbox"/>	3) Trees with identifiable historic, commemorative or habitat importance	
<input checked="" type="checkbox"/>	2) Trees of particularly good form, especially if rare or unusual	
<input type="checkbox"/>	1) Trees with none of the above additional redeeming features	
Sub Total		2

Part 2: Expediency assessment - *Trees must have accrued 9 or more points to qualify*

<input type="checkbox"/>	5) Immediate threat to tree	Notes
<input type="checkbox"/>	3) Foreseeable threat to tree	
<input type="checkbox"/>	2) Perceived threat to tree	
<input checked="" type="checkbox"/>	1) Precautionary only	
Sub Total		X

Part 3: Decision guide

0 - Do not apply TPO 1-6 TPO indefensible 7-10 Does not merit TPO 11-14 TPO defensible 15+ Definitely merits TPO

Total Score **14** Decision: **MAKE TPO**

Comments Secondary branches in lower crown area are in contact with overhead telephone cables and LV lines.

Planning Committee

Quarterly Enforcement Report

19 May 2011

Report of Strategic Director Planning, Housing and Economy

PURPOSE OF REPORT

To inform and update Members of the progress of outstanding formal enforcement cases and to inform Members of reviews caseload statistics

This report is public

Recommendations

The Planning Committee is recommended:

- (1) To accept this report.

Details

Background

- 1.1 The last quarterly report was given to this Committee on 6 January 2011, and this report continues the regular reporting on enforcement matters in this format which commenced in October 2008.

The Current Situation

- 2.1 Appendix One provides a comprehensive history of those cases which have progressed to formal action of one type or another.

Implications

Financial: It is anticipated that the cost of taking enforcement action can be met within existing budgets. The cost implications with regards to action at Heyford Park will be addressed in a future report.

Comments checked by Eric Meadows, Service Accountant 01295 221556

Legal: There are no additional legal implications arising for the Council from this report.

Comments checked by Nigel Bell Team Leader – Planning and Litigation 01295 221687

Risk Management: Where it is relevant to do so the risk of taking formal enforcement action is that costs could be awarded against the Council in any appeal that precedes to an inquiry or hearing if this action is subsequently considered to have been unreasonable. The risk of not taking effective and timely action is that a complaint could be made by a complainant to the Local Enforcement Ombudsman.

Comments checked by Claire Taylor, Community and Corporate Planning Manager 01295 221563

Wards Affected

All

Document Information

Appendix No	Title
Appendix One	Enforcement and Prosecution Quarterly Report
Background Papers	
None	
Report Author	Bob Duxbury, Development Control Team Leader
Contact Information	01295 221821 bob.duxbury@Cherwell-dc.gov.uk

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
PROS 27/03 4.09.03 PROS 13/06 15.06.06	Hanwell Fields Banbury	Breach of Sec 106 agreement relating to LAPS & LEAPS and laying out of informal open space	Court order 04.09.08	Various dates in 2009	N/A	N/A	N/A	CDC actively pursuing the transfer of the remaining sports pitches and parks Legal department have sent a letter to Taylor Wimpey Meeting held with Taylor Wimpey – significant progress being made
ENF 2/06 16.02.06 09/00686/ PCN	Bodicote Post Office 43-45 Molyneux Drive Bodicote	Non-compliance with approved plans 04/01317/F Works not completed by 1 November 2009	Enforcement Notice served 24.01.07 29.11.09	07.09.07	09/00315/F			15.05.09 undertaking made to the court by Mr & Mrs Ayres who also agreed to pay £250.00 towards the Council's costs Works proceeding but unlikely to be completed by the compliance date. PCN served - extension given until 4.01.10 to respond – Application submitted 10/00267/F and approved subject to condition to comply by the end of August 2010. Some remedial works undertaken Legal advice to be sought on how to proceed to resolve this matter
ENF 14/07 Delegated	Corner Farm Oakley Road Horton-cum-Studley	Use of land as builders yard, lighting columns, building as a builders office and store	Enforcement Notice served 28.06.07	09.02.08 & 09.06.08		Dismissed 05.08.08	05.08.09 and 05.03.10	Offices still occupied, Fennels to re-locate within the site, letter expected. New breaches identified. Letter sent to the occupier of the butchers inviting a planning application. Email has been sent to OCC as they are the responsible authority regarding the deposit of waste materials on the land

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
PROS 15/08 10.04.08	Wabag Aynho Road Adderbury	Failure to comply with S 106 relating to remedial works on public open space			02/02002/F			Owner of the open space to be pursued for compliance with S 106. Preparation of the land for the installation of landscaping underway
ENF LB 18/08 26.06.08	Greystones Middle Street Islip	Removal of stonessfield slates and insertion of velux window in north elevation	Listed building Enforcement Notice served 03.11.08	15.09.09	04/00035/F 04/00036/LB	Appeal dismissed 7.08.09	7 August 2012	Hearing 16.06.09. Wording of the notice varied, compliance period extended, appeals dismissed 7 August 2009
ENF 19/08 Delegated	22 Milton Street Banbury	Dormer window	Enforcement Notice served 10.09.08	05.05.09	Revised application 08/01600/F refused 22.08.08. 09/00764/F refused 10.08.09	Appeal Dismissed Appeal dismissed 21.12.09	11.11.09	Successful prosecution in the Magistrates court 2 July 2010. Fined £200.00 and ordered to pay the Council's costs of £1950.00 Dormer has been removed Further planning application 10/01702/F refused. Matter to be referred back to legal for further prosecution action
08/00604/ BCON	Lince Lane Copse	Breach of conditions 02/02064/F						Letter sent to the occupiers requesting a timetable for compliance with conditions regarding footpath and car park-

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
09/00286/ ECOUC	OS Parcel 8000 adjacent to the street from Wigginton to Hook Norton Wigginton	Change of use from agriculture to B1 light industrial use			08/00365/F 10/01918/F			Following meeting with officers planning application and clue applications to be submitted. Other unauthorised buildings are being removed.- Planning application approved This item will not appear next time
09/00572 EUNDEV	Land at Patrick Haugh/Harris Road, Upper Arcott	2 containers	04/02/2010	18/06/2010	Appeal received 15.03.10		18.02.11	Notice varied and upheld on appeal 18.11.10 Containers removed, notice complied with This item will not appear next time
11/00093/ 94/95/96/97/ 98/99/100/ 101/ ECOUC	Plots 1 – 16 Land NE of Fenny Compton Road Claydon	Change of use of agricultural land to amenity land	22/02/2011	28/06/2011		Appeals received 28/03/2011		
09/00710/ PCN 10/00008/ ECOUC	OS parcel 3349 & 4668, NW of A361 Williamscot	Breaches of planning control – change of use to residential	8.12.09 Notice served 2.02.10	16.09.10				Notice complied with This item will not appear next time

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
10/	286-304 Broughton Road (Claypits Close) Banbury	Breach of S106 LAP	Injunction to be served		05/00173/OUT			26.08.10 Letter received from Linden Homes giving undertaking to CDC regarding the provision of LAP Agreed a timetable for landscaping scheme that will be completed by beginning of June 2011
10/00208/ ECOU	Grange Farm Chesterton	Change of use of land to provide a site for a mobile home	Notice served 13.12.2010	21 April 2011				Appeal lodged 20.01.2011 Enforcement notice withdrawn by CDC 7.03.2011 New application to be submitted This item will not appear next time
10/00218/ ELISTED	Sundial Cottage Shutford	UPVC windows			11/00175/LB			Instructions to legal Requisitions served. Owner has applied to English Heritage to have the property de-listed. If that is unsuccessful agent has stated that windows will be removed. English Heritage has rejected the de-listing. Application approved 28/03/11 with conditions regarding the timetable for the works to be completed
10/00263/ ECOU	Heathfield Nursing Home Heathfield	Change of use of agricultural land	Notice Served 2/03/2011	4/07/2011	10/01590/CLUE refused 20.12.10			Notice took effect 4 April 2011. Compliance required by 4 July 2011

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
10/00264/ ELISTED	11 Daisy Hill Duns Tew	Conservatory			10/01424/LB 10/01454/F			Instructions to legal 29 July 2010 Meeting held on site Applications refused 29.12.10. Appeals in progress
10/00265/ ELISTED	Child First Nursery 8 Horse Fair Banbury	Removal of cill and erection of decking			10/00775/F 10/00777/LB			Instructions to legal 28 July 2010 Requisitions served Invalid application submitted Enforcement notice to be served New application refused, further instructions to be sent to legal
10/00309/ ECOU	Land north of Tythe Farm Shutford Road North Newington	Unauthorised storage of items on land	20/01/2011	25/05/2011	10/01375/F			Notice complied with This item will not appear next time
10/00329/ EBCON	Villiers Park House School Lane Middleton Stoney	Breach of condition no. 9 of 08/00816/F Reconstructed stone wall to be demolished and rebuilt in natural stone			06/01979/F 08/00816/F 10/01576/F			Instructions sent to legal 20/09/2010 Application submitted and approved 7.01.2011 This item will not appear next time
10/00336/ EUNDEV	Unit 2 Wedgwood Road Bicester	Perimeter fence and gates	4/02/2011	11 June 2011	10/01513/F refused 17/12/2010	Appeal received 10/03/2011		

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
10/00409/ ECOUC	Rear of Cross Gates Merton Road Ambrosden	Change of use of land from agricultural to domestic			10/00626/OUT 11/00154/CLUE			Instructions to legal 25/11/2010 Requisitions for information sent 30.11.2010 Clue submitted and approved 11.04.2011 This item will not appear next time
10/00414/ EUNDEV	2 Begbroke Crescent Begbroke	Outbuilding and operation of Minicab Business			11/00637/F			Instructions to legal 2/12/2010 Application submitted, invalid on receipt 15.04.11
10/00417/ ELISTED	20 Newton Purcell Buckingham	Two storey rear extension and detached garage						Instructions to legal 8/12/2010 Ongoing negotiations with owner. Remedial works to be undertaken
11/00042/ EUNDEV	14 Woodstock Road East Begbroke	Unauthorised building						Instructions to legal 21.02.2011
11/000**/ ECOUC	Land at Patrick Haugh/Harris Road, Upper Arcott	Container						To be investigated

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
Heyford Park Appeals					Main Appeal - 08/00716/OUT for new settlement of 1075 dwellings, together with assoc works and facilities including employment uses, community uses, school playing fields and other physical and social infrastructure. Related CA consent appeals.			Planning Inquiry took place between 30 September and 24 October. 2008. Inspector to prepare report for the Secretary of State regarding the main appeal and related conservation area consent appeals. Inspector's report completed and is with the Secretary of State. Planning permission granted 11 January 2010 A decision now needs to be made on the process to determine the outstanding enforcement appeals at Heyford Park.
ENF 2/07 Delegated	Building 3209	Commercial storage in breach of 05/01969/F	Notice served 23.01.07	6.03.07		Appeal dismissed 1.11.07	01.11.08	Full compliance expected by mid January 2009 after which time a criminal investigation will be undertaken. Partially complied
ENF 32/07 Delegated	Southern Bomb Stores	Storage of fireworks	Notice served 14.12.07	25.01.09		Appeal received		Discussions ongoing Enforcement notice to be withdrawn

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
ENF 36/07 Delegated	Buildings 88 and 381	Continued use as storage and assembly of environmental control equip	Notice served 22.01.08	4.03.09		Appeal received		Application for cou for 10 years 10/01778/F, PCO 10/01118/F for cou for 10 years, PDE
ENF 37/07 Delegated	Building 442	Continued use as a training facility	Notice served 6.02.08	14.03.09		Appeal received		Application 10/01778/F for cou for 10 years, PCO
ENF 7/08 Delegated	Building 41	Change of use to temporary residential class C3 accommodation	Notice served 16.05.08	20.06.09		Appeal received		New masterplan application 10/01642/OUT –PDE. When permission is issued, appeal will no longer be necessary
ENF 16/08 Delegated	Building 293	Change of Use to light industry (screen printers)	Notice served 22.07.08	29.08.09		Appeal received		Building unoccupied, discussions ongoing. Enforcement notice may be withdrawn
ENF 21/08 17.07.08	Land and buildings	Change of Use of land and buildings by Paragon in breach of 07/01260/F	Notice served 3.09.08	6.10.09		Appeal received		Discussions with Paragon

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
ENF 22/08 17.07.08	Buildings	Change of use of buildings by Paragon in breach of 07/01259/F	Notice served 3.09.08	6.10.09		Appeal received		Discussions with Paragon
ENF 23/08 17.07.08	6 lamp posts	Use by Paragon in breach of 07/01262/F	Notice served 10.09.08	11.10.09		Appeal received		Discussions with Paragon
ENF 24/08 17.07.08	2 lamp posts	Use by Paragon in breach of 07/01264/F	Notice served 9.09.08	10.10.09		Appeal received		Discussions with Paragon
ENF 25/08 17.07.08	Building 2002	Change of use in breach of 07/01268/F	Notice served 2.09.08	3.10.09		Appeal received		Discussions ongoing, Enforcement notice may be withdrawn
ENF 27/08 17.07.08	Trench and concrete	Change of use in breach of 07/01266/F	Notice served 2.09.08	3.10.09		Appeal received		Discussion with Paragon
ENF 28/08 17.07.08	3 Hardened aircraft shelters	Change of use in breach of 07/01267/F	Notice served 2.09.08	3.10.09		Appeal received		10/01116/F – PCO, if granted, appeal will no longer be necessary
ENF 29/08 17.07.08	Liquid petroleum gas tanks and air intake duct	Use by Paragon in breach of 07/01263/F	Notice served 8.12.08	19.01.10		Appeal received		Planning permission for works in association with Building 2002. Discussions with Paragon, Enforcement notice to be withdrawn

Enforcement and Prosecution Quarterly Report – 19 May 2011

APPENDIX 1

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
ENF 30/08 Delegated	Building 103	Use of building by Kingsground narrow boats	Notice served 14.11.08	22.12.09		Appeal received		10/01778/F for cou for 10 years, PCO. Appeal may no longer be necessary
ENF 32/08 Delegated	Building 3053	Change of use to B8 storage by NOC	9.10.08	14.11.09		Appeal received		Building let for agricultural storage. Discussions with CDC over use and withdrawal of enforcement notice

Planning Committee

Decisions Subject to Various Requirements – Progress Report

19 May 2011

Report of Development Control Team Leader

PURPOSE OF REPORT

This report aims to keep members informed upon applications which they have authorised decisions upon to various requirements which must be complied with prior to the issue of decisions.

An update on any changes since the preparation of the report will be given at the meeting.

This report is public

Recommendations

The Planning Committee is recommended:

- (1) To accept the position statement.

Details

The following applications remain outstanding for the reasons stated:

Subject to Legal Agreement with Cherwell District Council

01/00662/OUT	Begbroke Business and Science Park, Sandy Lane, Yarnton
(24.3.11)	Subject to legal agreement re:off-site highway works, green travel plan, and control over occupancy now under discussion. Revised access arrangements refused October 2008. Appeal dismissed. Decision to grant planning permission re-affirmed April 2011. New access road approved April 2011

09/00171/OUT (17.7.08)	Pow Wow Water Site, Langford Lane, Kidlington Subject to agreement re transport infrastructure payments.
10/00640/F	Former USAF housing South of Camp Rd, Upper Heyford Subject to legal agreement concerning on and off site infrastructure and affordable housing
10/00765/F (9.9.10)	Land SW Wickes, Launton Rd. Bicester Subject to legal agreement re public art and off-site highway infrastructure. Draft agreement with other side
10/00806/OUT (12.6.10)	Land at Arncott Hill Farm Buchanan Rd. Arncott Subject to legal agreement re affordable housing and on-site/off-site infrastructure contributions; comments of Environment Agency and departure procedures. Agreement drafted
10/00807/OUT (12.6.10)	Land SW Orchard Close, Arncott Subject to legal agreement re affordable housing and on-site/off-site infrastructure contributions; comments of Environment Agency and departure procedures. Agreement drafted
10/01021/F	Otmoor Lodge, Horton-cum-Studley Subject to legal agreement concerning building phases and interim appearance. Draft agreement prepared
110/01302/F (4.11.10)	Land south of Bernard Close, Yarnton Subject to legal agreement concerning on and off site infrastructure and affordable housing
10/01575/OUT (24.3.11)	Former SAPA site, Southam Rd. Banbury Subject to planning obligation concerning highway infrastructure contributions, green travel plan and bus stop provision
10/00642/OUT (24.3.11)	Heyford Park, Upper Heyford Subject to planning obligations

10/01823/OUT (24.3.11)	Land south of Overthorpe Rd, Banbury Subject to legal obligation re transportation contributions and departure procedures
10/01867/LB (24.3.11)	Old Bodicote House, White Post Rd. Bodicote Subject to referral to Secretary of State
10/01877/F (24.3.11)	Penrose House, 67 Hightown Rd, Banbury Subject to legal obligation to secure financial contributions to outdoor sports facilities, education and library facilities
11/00069/F (14.4.11)	Land W of Begbroke Science Park, and E of Woodstock Rd. Yarnton Subject to departure procedures

Implications

Financial:	There are no additional financial implications arising for the Council from this report. Comments checked by Joanne Kaye, Service Accountant 01295 221545
Legal:	There are no additional legal implications arising for the Council from this report. Comments checked by Nigel Bell, Solicitor 01295 221688
Risk Management:	This is a monitoring report where no additional action is proposed. As such there are no risks arising from accept the recommendation. Comments checked by Rosemary Watts, Risk and Insurance Manager 01295 221560

Wards Affected

All

Document Information

Appendix No	Title
-	None

Background Papers	
All papers attached to the planning applications files referred to in this report	
Report Author	Bob Duxbury, Development Control Team Leader
Contact Information	01295 221821 bob.duxbury@Cherwell-dc.gov.uk

Planning Committee

Appeals Progress Report

19 May 2011

Report of Strategic Director, Planning Housing and Economy

PURPOSE OF REPORT

This report aims to keep members informed upon applications which have been determined by the Council, where new appeals have been lodged. Public Inquiries/hearings scheduled or appeal results achieved.

This report is public

Recommendations

The meeting is recommended:

- (1) That the position statement be accepted.

Details

New Appeals

- 1.1 **11/00093/ECOU- 11/00101/ECOU- Land adjacent to Oxford Canal, Boddington Road, Claydon-** appeals by Mr D Clarke, Mr & Mrs McCarthy, Mr J Willis, Ms R Lloyd, Mr & Mrs Cox, Mr I Kirkpatrick, Mr T Wallstrom, Ms J S Chattaway and Mr K Clarke against the service of an enforcement notice alleging a breach of planning control – without planning permission, the change of use of agricultural land to use as a private plot for domestic garden purposes- Hearing
- 1.2 **11/00167/F- Manor Farm, Noke** - appeal by Mr K O Pelton against the refusal of planning permission for a revised domestic curtilage including the change of use of agricultural land to domestic- Hearing

- 1.3 **11/00014/F – 12 Fair Close, Bicester** – appeal by Ms Jane Benham against the refusal of planning permission for the erection of a two storey side extension – Householder written reps

Forthcoming Public Inquiries and Hearings between 19 May 2011 and 16 June 2011

- 2.1 **Inquiry at 10.00am on Wednesday 8 June 2011, Council Chamber, Bodicote House, Bodicote** – to consider the appeal by Mr David Goddard against the refusal of planning application 10/00839/F for the change of use of land for British Romani gypsy families, 8 mobile homes, 8 touring caravans for nomadic use only and 8 utility day rooms at OS parcel 2678, adjacent A43/A34 by Hampton Gay and Poyle

Results

Inspectors appointed by the Secretary of State have:

- 3.1 **Allowed the appeal by Mr & Mrs RJ and HP Beesley against the refusal of application 10/01401/F for a single storey dwelling with parking area at Glenside, Paddock Farm Lane, Bodicote (Delegated)** – In the Inspector's view, when seen from outside the Conservation Area from Wykham Lane and nearby footpaths, the proposed bungalow would sit comfortably within the village framework, against the backdrop of a significantly larger two storey house and between bungalows at the end of Paddock Farm Lane and Malthouse lane. It would appear as a logical 'rounding off' of the village, without detracting from the setting of many attractive buildings within the Conservation Area.
- 3.2 **Dismissed the appeal by Mr G Durand and Miss H Ferguson against the refusal of application 10/01611/F for a single storey (at first floor) and two storey side extensions and loft conversion at 9, The Closes Kidlington (Delegated)** - The Inspector stated "Although the first floor would be set back from the front, it would intrude on the existing upper level gap between no. 9 and no. 85, and reduce the degree of detachment between the buildings that contributes to the prominence of no. 85. This would detract from the significance of no. 85 as derived from its setting. The proposed use of render for the upper floor would also not be in keeping with the materials of no. 9 and the extension would unbalance the semi-detached pair." The Inspector went on to conclude that the proposal would harm the setting of no. 85 and the character and appearance of the Conservation Area.

- 3.3 **Allowed the appeal by Mrs H Mountfield against the refusal of application 10/01111/F for the erection of a timber framed summer house at Lower Farm Cottage, Lower Street, Islip (Delegated)** – In the Inspector’s view, as a single storey structure, with a maximum height of 3.36 metres to the ridge and a footprint of 13.5 square metres, it would fit comfortably within the garden without occupying a disproportionate area of the curtilage or otherwise appearing too large. The proposed summer house, would not, by reason of its siting, design or materials, fail to preserve the character and appearance of the Conservation Area.
- 3.4 **Dismissed the appeal by Mr Michael Furey against the refusal of application 10/01720/F for three ornamental walls to the front of the property nearly enclosing the drive at 72 Daimler Avenue, Banbury (Delegated)** – The Inspector stated “ The walls that have been erected to the front of the appeal property, whilst not particularly high, appear visually discordant and detract from the pleasing impression of spaciousness within the street scene” This led the Inspector to conclude that the development causes significant harm to the character and appearance of the area.
- 3.5 **Dismissed the appeal by Mr N Wingfield against the refusal of application 10/01240/F for the demolition of three brick garages and the erection of a two storey unit with ground and first floor flats at Goodrington Close (adjacent to 36 Townsend) Banbury (Delegated)** – In the Inspector’s view, the proposed residential development would extend across a larger proportion of the site and being two storeys in height with a pitched roof, would appear as a far more substantial and imposing structure. The overall effect of this would be to erode the spacious setting of the junction, to the detriment of the character and quality of the street scene. The Inspector concluded that the proposed development would cause significant harm to the character and appearance of the area.
- 3.6 **Dismissed the appeal by Mr R Hayward against the refusal of application 10/01339/F for a single storey dwelling at land rear of End Cottage, The Stile, Deddington (Delegated)** – The Inspector was of the view that none of the various listed buildings nearby would be directly affected by the development and went onto to state “therefore the site is capable of being developed without significantly altering the street pattern or affecting any significant views within the conservation area. The site is also large enough, having regard to the general standards of the area, to accommodate a new dwelling.”

The Inspector shared the Council’s concern about the detailed design of the proposed dwelling. The design as a whole lacks clarity failing either to respect local traditional building styles or to create a contemporary design of real quality.

The Inspector concluded that the proposed development is not of

sufficient design quality to preserve, and would certainly not enhance, the character and appearance of the Deddington Conservation Area.

- 3.7 **Dismissed the appeal by Mr Brain Franklin against the refusal of application 10/00747/F for the change of use of barn with extension to provide indoor equestrian school at Moorlands Farm, Murcott (Delegated)** – The Inspector found that the proposed use is not an agricultural use. Neither would the extended building be used to provide essential facilities for outdoor sport and outdoor recreation. The use would harm the openness of the Green Belt. The re-use of the building would have a materially greater impact than the present use on this openness. The factors in favour of the development do not clearly outweigh the harm arising from inappropriateness and from harm to the character and appearance of this rural location. In this case, there are not the very special circumstances necessary to justify the development.
- 3.8 **Dismissed the partial costs application made against the Council relating to the appeal against the refusal of application 10/00747/F by Mr Franklin, Moorlands Farm, Murcott** –The Inspector found that there was no evidence that the Council did not give through consideration to relevant advice from the Environment Agency. Unreasonable behaviour, resulting in unnecessary expense by the appellant had not been demonstrated and the partial award of costs was not justified

Implications

- Financial:** The cost of defending appeals can normally be met from within existing budgets. Where this is not possible a separate report is made to the Executive to consider the need for a supplementary estimate.
Comments checked by Joanne Kaye, Service Accountant 01295 221545
- Legal:** There are no additional legal implications arising for the Council from accepting this recommendation as this is a monitoring report.
Comments checked by Nigel Bell, Team Leader-Planning & Litigation 01295 221687
- Risk Management:** This is a monitoring report where no additional action is proposed. As such there are no risks arising from accepting the recommendation.
Comments checked by Nigel Bell, Team Leader-Planning & Litigation 01295 221687

Wards Affected

All

Document Information

Appendix No	Title
-	None
Background Papers	
All papers attached to the planning applications files referred to in this report	
Report Author	Bob Duxbury, Development Control Team Leader
Contact Information	01295 221821 bob.duxbury@Cherwell-dc.gov.uk