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Committee: **Planning Committee**

Date: **Thursday 3 November 2011**

Time: **4.00 pm**

Venue **Bodicote House, Bodicote, Banbury, OX15 4AA**

Membership

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

Substitutes

Councillor Maurice Billington
Councillor Mrs Diana Edwards
Councillor Timothy Hallchurch MBE
Councillor P A O'Sullivan
Councillor Nicholas Turner
Councillor Barry Wood
Councillor Norman Bolster
Councillor Andrew Fulljames
Councillor Kieron Mallon
Councillor Leslie F Sibley
Councillor Douglas Williamson

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 - 12)

To confirm as a correct record the Minutes of the meeting of the Committee held on 6 October 2011.

Planning Applications

6. **Land South of Bernard Close. Berkeley Homes Site, Cassington Road, Yarnton** (Pages 15 - 39) **10/01302/F**

7. **50 Market Square, Bicester, OX26 6AJ** (Pages 40 - 44) **11/01304/F**

8. **Land South West Of The Mead, Woodstock Road, Yarnton** (Pages 45 - 66) **11/01356/F**

9. **Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire** (Pages 67 - 79) **11/01372/CM**

10. **Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire** (Pages 80 - 86) **11/01402/CM**

Other Reports

11. **Variation of s106 agreement Rural Housing Trust Properties, Congyer Close, Bletchingdon, Sands Close, Islip** (Pages 87 - 89)

Report of Head of Service 8

Summary

To propose a variation to a s106 agreement made with the Rural Housing Trust which would enable better access to mortgage finance for prospective purchasers of shared ownership units.

Recommendations

The Planning Committee is recommended to:

(1) Approve the variation of the s106 agreement.

Tree Preservation Orders

12. Tree Preservation Order (no. 02/2011) Yew Tree at Holy Trinity Church, Shenington (Pages 90 - 106)

Report of Director 3

Summary

To seek the confirmation Tree Preservation Order no 02-11 with one objection relating to a Yew tree at Holy Trinity Church, Shenington (copy plan attached at appendix 1).

Recommendations

The Planning Committee is recommended to:

(1) Confirm Tree Preservation Order (02/2011) at the site of Holy Trinity Church, Shenington without modification in the interest of public amenity.

13. Tree Preservation Order (no. 10/2011) Apple tree at Plemont, School Lane, North Newington, Banbury (Pages 107 - 124)

Report of Director 3

Summary

To seek the confirmation Tree Preservation Order no 10-11 with one objection relating to an Apple tree at Plemont, School Lane, North Newington, Banbury, Oxon, OX15 6AQ (copy plan attached as Annex 1).

Recommendations

The Planning Committee is recommended to:

(1) Confirm Tree Preservation Order 10-11 at the site of Holy Plemont, School Lane, North Newington be confirmed without modification in the interest of public amenity.

Review and Monitoring Reports

14. Decisions Subject to Various Requirements (Pages 125 - 128)

Report of Development Control Team Leader

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.

Recommendations

The Planning Committee is recommended to:

(1) Accept the position statement.

15. **Appeals Progress Report** (Pages 129 - 132)

Report of Development Control Team Leader

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.

Recommendations

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@cherwell-dc.gov.uk or (01295) 221589 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. The definition of personal and prejudicial interests is set out in the constitution. The Democratic Support Officer will have a copy available for inspection at all meetings.

Personal Interest: Members must declare the interest but may stay in the room, debate and vote on the issue.

Prejudicial Interest: Member must withdraw from the meeting room and should inform the Chairman accordingly.

With the exception of the some very specific circumstances, a Member with a personal interest also has a prejudicial interest if it is one which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

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 Natasha Clark, Legal and Democratic Services natasha.clark@cherwell-dc.gov.uk (01295) 221589

Sue Smith
Chief Executive

Published on Wednesday 28 September 2011

Cherwell District Council

Planning Committee

Minutes of a meeting of the Planning Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 6 October 2011 at 4.00 pm

Present:
Councillor Rose Stratford (Chairman)
Councillor Alastair Milne Home (Vice-Chairman)

Councillor Ken Atack
Councillor Fred Blackwell
Councillor Colin Clarke
Councillor Tim Emptage
Councillor Mrs Catherine Fulljames
Councillor Chris Heath
Councillor David Hughes
Councillor Russell Hurle
Councillor Mike Kerford-Byrnes
Councillor George Parish
Councillor D M Pickford
Councillor G A Reynolds
Councillor Trevor Stevens
Councillor Lawrie Stratford

Substitute Members:
Councillor Barry Wood (In place of Councillor Michael Gibbard)

Apologies for absence:
Councillor Michael Gibbard
Councillor James Macnamara

Officers:
Bob Duxbury, Development Control Team Leader
Caroline Ford, Assistant Planning Officer
Ross Chambers, Solicitor
Natasha Clark, Senior Democratic and Scrutiny Officer

91 **Declarations of Interest**

Members declared interests in the following agenda items:

7. Land and Buildings to the rear of 81-85 Sheep Street, Bicester, Oxon OX26 6JS.
Councillor Barry Wood, Prejudicial, as a Member of Executive.

Councillor D M Pickford, Personal, as a Member of Bicester Town Council which had been consulted on the application.

Councillor D M Pickford, Prejudicial, as a Member of Executive.

Councillor G A Reynolds, Personal, as a Member of Executive.

Councillor Ken Atack, Prejudicial, as a Member of Executive.

Councillor Lawrie Stratford, Personal, as a Member of Bicester Town Council which had been consulted on the application.

Councillor Rose Stratford, Personal, as a Member of Bicester Town Council which had been consulted on the application.

8. Land and Buildings to the rear of 81-85 Sheep Street, Bicester, Oxon OX26 6JS.
Councillor Barry Wood, Prejudicial, as a Member of Executive.

Councillor D M Pickford, Personal, as a Member of Bicester Town Council which had been consulted on the application.

Councillor D M Pickford, Prejudicial, as a Member of Executive.

Councillor G A Reynolds, Personal, as a Member of Executive.

Councillor Ken Atack, Prejudicial, as a Member of Executive.

Councillor Lawrie Stratford, Personal, as a Member of Bicester Town Council which had been consulted on the application.

Councillor Rose Stratford, Personal, as a Member of Bicester Town Council which had been consulted on the application.

9. Thames Valley Police HQ, Oxford Road, Kidlington, Oxfordshire, OX5 2NX.
Councillor Tim Emptage, Personal, as a Member of Kidlington Parish Council which had been consulted on the application.

10. Paragon Fleet Solutions, Heyford Park, Camp Road.
Councillor Mike Kerford-Byrnes, Personal, as Ward Member.

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

There were no petitions or requests to address the Committee.

93 **Urgent Business**

There was no urgent business.

94 **Minutes**

The Minutes of the meeting held on 8 September 2011 were agreed as a correct record and signed by the Chairman, subject to the following amendments:

Minute 72: Declarations of Interest

Delete declarations of interest for Councillor Milne Home for agenda item 7. 35 The Rydes, Bodicote and agenda item 14. 21 and 22 Portland Road, Milcombe, Banbury, Oxfordshire OX15 4RL.

Insert declarations of interest for Councillor Milne Home, personal, as a Member of Banbury Town Council which had been consulted on the application, for agenda item 11. 42 South Bar Street and agenda item 12. 42 South Bar Street.

95 **Cherwell Valley Service Area, Junction 10 M40, Northampton Road, Ardley**

The Committee considered a report which sought approval for the erection of 1 No. 800kw wind turbine and associated works.

The Committee discussed the potential impact of the proposal on the area and the suitability of the proposed location.

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

Resolved

That application 11/00524/F be approved subject to:

(i) Officers being satisfied, following further discussions, that the condition relating to aviation and radar impact is appropriate.

(ii) The following conditions:

(1) The development hereby permitted shall begin not later than three years from the date of this decision. (RC2)

(2) Written confirmation of the date on which the development first provided electricity shall be given to the local planning authority within one month of that event. The development hereby permitted shall be removed on or before the twenty fifth anniversary of the date on which the development first provided electricity, and the land restored to its former condition in accordance with a restoration scheme submitted not later than the twenty fourth such anniversary to and approved in writing by the local planning authority. The restoration scheme shall include, among other things, a timescale for the restoration of the site after the removal of the development, a description of the measures to be taken in the demolition and removal of the development hereby

permitted and of the measures to be taken to ensure that contemporary standards of pollution control and protection of public and neighbouring interests will be met.

(3) No development shall take place until details of the external colours and finishes of the development hereby approved have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out as approved and the agreed colours and finishes shall not be changed without the prior written consent of the local planning authority. (RC4A)

(4) The development hereby permitted shall be carried out in accordance with the following approved plans:

(i) Drawing No. CHMSA150311-1 dated 15/03/11

(ii) Drawing No. CHMSA150311-2 dated 15/03/11

(iii) Drawing No. 60mHM – KW1, 60m HiMast Class 1 Received 7 June 2011

(iv) Drawing No. 07/446-E01 dated 09.11.2007 Received 7 June 2011

(v) Additional Planning Information document dated March 2011

(5) No development shall take place until a construction method statement has been submitted to and approved by the local planning authority, including measures to secure: i) The monitoring and control of noise, vibration and dust caused by construction activity on the site; ii) Control of pollution or sedimentation and responding to any spillages or contamination during the construction phase, including among other things oil interceptors to serve vehicle parking and hardstanding areas; iii) Details of wheel washing equipment to ensure that no material is deposited on the nearby roads from vehicles travelling from the site; iv) The use of impervious bases and impervious bund walls to areas used for the storage of oils, fuels or chemicals on the site; v) Removal of the construction compound and all temporary buildings and the reinstatement of the whole site not subject to built development all within 6 months of the date on which the development first provided electricity; vi) The use of only approved routes to and from the site by traffic associated with the construction of the development hereby approved, or its decommissioning, and arrangements for parking and access at the site and for the storage of plant and materials there; vii) That no construction machinery shall be operated on the site, no process carried out on the site other than between 08:00 and 13:00 on Saturdays or between 07:30 and 18:00 on Mondays to Fridays unless previously approved in writing by the local planning authority, with no deliveries on Sundays or on Bank or other public Holidays; viii)Arrangements for outdoor artificial lighting (if necessary) so as to prevent nuisance to surrounding properties. Development shall be carried out in accordance with the approved construction method statement. (RC84)

(6) No development shall take place until a shadow flicker mitigation scheme has been approved in writing by the local planning authority.

The development shall be operated in accordance with the approved mitigation scheme.

(7) No development shall take place until a baseline television reception study has been carried out in an area previously approved in writing by the local planning authority, and the results submitted to the local planning authority. Details of works necessary to mitigate any adverse effects to domestic television signals caused in the survey area by the development shall, if approved in writing by the local planning authority, be implemented before the turbine blades are first fitted. A scheme for subsequent reactive mitigation in response to independently validated claims that television reception is impaired by the development, shall be submitted for approval by the local planning authority. The turbine shall not be brought into use until the reactive mitigation scheme has been approved, and the approved scheme shall be implemented for the life of the development.

(8) Written confirmation of the submission of the following details to the Ministry of Defence and the Civil Aviation Authority shall be provided to the local planning authority within 3 months of the date of this permission and there shall be no development until such confirmation has been given:

(i) Proposed date of commencement of the development; and,

(ii) The maximum extension height of any construction equipment to be on the site.

Written confirmation of the submission of the following details to the Ministry of Defence and the Civil Aviation Authority shall be provided to the local planning authority within 14 days of the completion of construction of the turbine:

(a) Date of completion of construction;

(b) The height above ground level of the highest part of the built development (anemometry mast or turbine rotor tip);

(c) The latitude and longitude of the highest part of the built development; and,

(d) The lighting details of the site.

(9) If the wind turbine hereby approved fails to provide electricity for a continuous period of 9 months then a scheme for the decommissioning and removal of the turbine and any other ancillary equipment and structures relating solely to that turbine shall be submitted within 2 months to the local planning authority for their written approval. If the turbine remains failed at the end of a continuous 12_month period (including the initial 9 months previously mentioned) then it shall be removed in accordance with the approved decommissioning scheme. The decommissioning scheme shall set the timescale for removal.

(10) That prior to the commencement of development pre-works checks must be carried out in relation to badgers and water voles and that in the event of circumstances having changed since the initial Phase 1 Habitat survey was carried out in April 2009 further mitigation and

method statements will be required. The results of the pre-works checks and if necessary the mitigation measures and method statements shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. (RC86A)

(11) SC 9.4A Carry out mitigation in ecological reports (RC85A) Recommendations of the Dormouse Report by Baker Shepherd Gillespie dated January 2010 and the recommendation of the Ornithology Report by Baker Shepherd Gillespie dated January 2010 and the recommendations set out in the applicants email dated 21 June 2011 relating to reptiles

(12) No development shall take place until an ecological method statement has been approved in writing by the local planning authority. The ecological method statement shall include arrangements for the following: i) The provision of an Ecological Clerk of Works; ii) Details of and siting for bat roosts and bird nest boxes, including the timing of their provision; iii) The execution of the works generally relating to those measures set out in the ecological reports provided with the application. The development shall be carried out and operated in accordance with the approved ecological method statement. (RC86A)

(13) No development shall take place until a scheme to dispose of foul and surface water has been approved in writing by the local planning authority. The surface water drainage scheme shall be based on sustainable drainage principles and shall include an assessment of the hydrological and hydro geological context of the development. The surface water drainage system shall contain the 1 in 100 year storm event with suitable allowance for climate change. The scheme shall also contain details of the changes to the ground levels, surface details of the access road and working platform and SUDS system. The approved scheme shall be implemented before the development is brought into use. (RC88A)

(14) All cabling on the site to and from the wind turbine shall be underground.

(15) The turbine shall have an installed generating capacity of at least 0.8 megawatts.

(16) No wind turbine shall be operated on the site until a scheme has been submitted to and agreed with the Local Planning Authority for monitoring noise levels at up to five selected residential locations (or at representative locations close to those properties, to be agreed with the Local Planning Authority) during six months following connection to the electricity grid and full operation of all the turbines on the site. The duration of such monitoring shall be sufficient to provide comprehensive information on noise levels at a representative range of wind speeds and wind directions with all wind turbines operating. Monitoring shall be carried out in accordance with the approved monitoring scheme and the results provided to the local planning authority within four months of completion of the scheme. (RC53AA)

(17) No development shall take place until there has been approved by the local planning authority details of a nominated representative for the development and their contact arrangements to act as a point of contact for the public available by convenient means on at least six days each week together with the arrangements for notifying and approving any subsequent change in the nominated representative. The approved representative shall work within the approved details and shall have responsibility for liaison with the local planning authority in dealing with any noise complaints arising from the development during the period from start of work to completion of final site restoration. In the event that the local planning authority has given written notice to the wind farm operator three times in any 12_month period that it finds the nominated representative to be not working within the approved details, the wind farm operator shall replace the nominated representative, within two weeks of receipt of the third written notice, with an alternative who has been approved by the local planning authority.

(18) No development shall take place until written confirmation has been provided to the local planning authority that a Safety Report has been submitted to and approved in writing by the operators of London Oxford Airport in consultation with the Civil Aviation Authority in relation to the safe operation of London Oxford Airport with the proposed wind farm in place. The turbines shall only be operated in accordance with the terms of the Safety Report.

(19) No development shall take place until written confirmation is received by the local planning authority and approved in consultation with London Oxford Airport and the Civil Aviation Authority that radar mitigation measures in accordance with CAP 764 (Policy and Guidance on Wind Turbines) (and any other relevant CAA guidance in force at the time) can be implemented by London Oxford Airport such that a radar operation at London Oxford Airport will be safe when the turbines become operational.

(20) The intensity of air navigation warning lights fitted to the turbines and anemometry mast shall not exceed 25 (to be confirmed) candela, except with the written approval of the local planning authority.

(21) The development hereby approved shall not be brought into use until written notice, signed by a Member of the Institution of Structural Engineers, has been provided to the local planning authority to the following effect:

(i) That the manufacture of the wind turbine conforms to European Standard IEC61 4001; and

(ii) That the design and installation of the installation as a whole has been carried out in compliance with BS EN 614001:2005 Wind turbines Design requirements. The maintenance operation and removal of the installation as a whole shall comply with BS EN 614001:2005.

(22) All existing trees, shrubs and other natural features not scheduled for removal shall be fully safeguarded during the course of the site works and building operations (see BS 5837: 2005). No work shall commence on site until all trees, shrubs or features to be protected are fenced along a line to be agreed with the Local Planning Authority. Such fencing shall be maintained during the course of the works on site. No unauthorised access or placement of goods, fuels or chemicals, soils or other materials shall take place inside the fenced area. (RC72)

(23) Before any works commence on site, details of the design of building foundations and the layout, with positions, dimensions and levels, of service trenches, ditches, drains and other excavation on site, insofar as they may affect trees and hedgerows on or adjoining the site, shall be submitted to and approved by the Local Planning Authority. (RC72)

(24) All existing hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedgerows on or immediately adjoining the site shall be protected from damage for the duration of works on the site. This shall be to the satisfaction of the Local Planning Authority in accordance with relevant British Standards (BS 5837: 2005).

(25) That the developer shall inform the Local Planning Authority, in writing, of the date of installation of the meteorological testing mast and that at the expiration of 18 months from the date of installation the mast shall be removed from the site. The land shall be restored to its former condition on or before that date unless the construction of the turbine is to commence within the 6 months following its removal.

96 **Land and Buildings to the rear of 81-85 Sheep Street, Bicester, Oxon OX26 6JS**

The Committee considered a report for the demolition of sheds and outbuildings to the rear of 81-85 Sheep Street, make good the new boundary wall in brickwork and change of use to public car park.

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 11/01132/CDC be approved under Regulation 3 subject to the following conditions:

(1) SC 1.4 (Time Limit)

(2) SC 4.14 BC (Plan of car parking provision)

(3) That full details of the proposed boundary wall to encompass the rear of 81-85 Sheep Street shall be submitted to and approved in writing by

the Local Planning Authority prior to the commencement of development. The development shall then be carried out in accordance with the approved details.

(4) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with plan no 12.11 Rev 1

(Councillors Atack, Pickford, Reynolds and Wood left the meeting for the duration of this item)

97 **Land and Buildings to the rear of 81-85 Sheep Street, Bicester, Oxon OX26 6JS**

The Committee considered a report for the demolition of sheds and outbuildings to the rear of 81-85 Sheep Street (Conservation Area Consent)

The Development Control Team Leader advised Members that as the applicant for conservation area consent was Cherwell District Council, the Secretary of State would ultimately determine the application. The Planning Committee could indicate if they were minded to approve the application which would be taken into consideration by the Secretary of State.

The Committee was satisfied with the evidence presented.

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

Resolved

That the Planning Committee be minded to approve application 11/01133/CAC subject to the following conditions and to referral of the application to the Secretary of State:

(1) SC 1.4 (Time Limit)

(2) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with plan no 12.11 Rev 1

(Councillors Atack, Pickford, Reynolds and Wood left the meeting for the duration of this item)

98 **Thames Valley Police HQ, Oxford Road, Kidlington, Oxfordshire, OX5 2NX**

The Committee considered a report which sought permission for the erection of a three storey building to provide additional office space including associated vehicle parking and landscaping works.

The Development Control Leader read a letter from a local resident who had been unable to address the Committee personally.

The Committee discussed the impact on traffic in the vicinity, highway safety and parking provision for the site. Members noted that the application was supported by a travel plan and agreed that it was important for the plan to be implemented before the building was occupied.

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

Resolved

That application 11/01151/F be approved subject to:

(i) The applicant entering into a planning obligation to the satisfaction of the District Council.

(ii) The following conditions:

(1) 1.4A (RC2) [Full permission: Duration limit (3 years)]

(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: application forms, design and access statement, statement of community involvement, phase 1 environmental survey, transport assessment and all accompanying documentation, site location plan and drawing numbers 100292/A/PL01 A, 100292/A/PL02 B, 100292/A/PL03 B, 100292/A/PL04 B, 100292/A/PL05 B, 100292/A/PL06 B, 100292/A/PL07 B, 100292/A/PL08 C, 100292/C/002 A, 100292/C/003 B, 100292/C/006 A, 100292/C/900 A and JNY7037-03 B

(3) The external walls of the building shall be constructed in accordance with the samples of the bricks to be "Selected Light Facings" manufactured by Freshfield Lane Brick Works Limited, the render – colour RAL 9016 and the Rimex stainless steel cladding – colour green unless otherwise agreed in writing by the Local Planning Authority. (RC4A)

(4) That before the development is first occupied, the parking and manoeuvring areas shall be provided in accordance with the plan (100292/A/PL02 B) hereby approved and shall be constructed, laid out, surfaced (bound material), drained (in accordance with SUDs) in accordance with full details which shall be submitted for the prior approval in writing by the Local Planning and shall be completed and retained unobstructed except for the parking and manoeuvring of vehicles at all times. (RC14AA)

(5) That prior to occupation of the development, a travel plan to reduce dependency on the private car, which shall include clear and unambiguous objectives and modal split targets, together with a time-

bound programme of implementation, monitoring and regular review and improvement; and be based on the particulars contained within the approved framework produced in support of this application, shall be submitted to and approved in writing by the Local Planning Authority and thereafter operated. (RC66A)

99 **Paragon Fleet Solutions, Heyford Park, Camp Road**

The Chairman advised the Committee that application 11/01247/F had been withdrawn by the applicant.

100 **Silverstone Circuit, Towcester, Northamptonshire**

The Committee considered an outline application for mixed use development comprising offices, workshops and distribution facilities (Use Class B1, B2 & B8), education campus including on site student accommodation (D1 & C2), three hotels (C1), ancillary spectator facilities, including welcome centre and museum of motorsport (D2) and non retail promotional automotive display space (sui generis), leisure and event spaces including outdoor activity areas and permanent outdoor stage (D2), reconfiguration of existing and provision of additional, temporary and permanent grandstands (sui generis), areas of hard surfacing for the temporary siting of hospitality units during scheduled major events, revised parking and access arrangements including a new access off the A43 and/or improvements to the existing A43/Dadford Road junction, supporting infrastructure, demolition of existing structures, associated landscape works in accordance with the approved development brief Silverstone Circuit Master Plan (Feb 2009) (SNC ref. S/2011/1051/MAO).

Members noted that the application was being dealt with by South Northamptonshire Council and Aylesbury Vale District Council. Cherwell District Council was a consultee in the process.

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

Resolved

That South Northamptonshire Council be advised that Cherwell District Council welcomes the proposal, subject to a note being added to the council's letter to the effect that upon determination of the application, Cherwell District Council be advised of the outcome.

101 **Decisions Subject to Various Requirements**

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

Resolved

(1) That the position statement be accepted.

102 **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

(1) That the position statement be accepted.

103 **Exclusion of Public and Press**

Resolved

That, in accordance with Section 100A(4) of Local Government Act 1972, the press and public be excluded form the meeting for the following item of business, on the grounds that they could involve the likely disclosure of exempt information as defined in paragraph 3 of Schedule 12A of that Act.

104 **Bodicote Post Office - Update on Enforcement Action**

The Committee considered a joint report of the Interim Head of Legal and Democratic Services and the Development Control Team Leader which updated Members on the enforcement action at Bodicote Post Office.

Resolved

(1) That the current position on the enforcement action be noted.

The meeting ended at 5.40 pm

Chairman:

Date:

CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

6 November 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

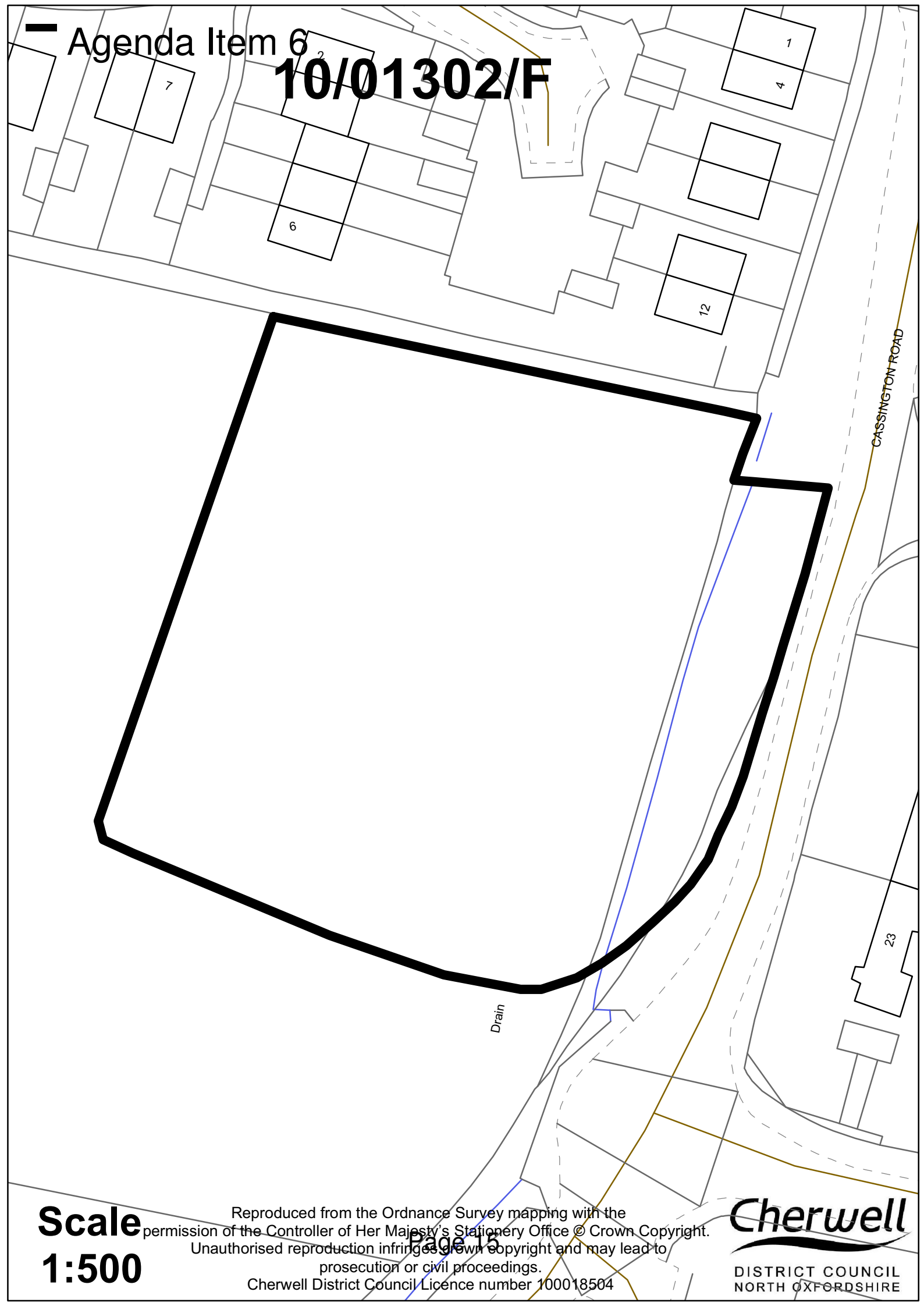
For each of the applications listed are: the application form; the accompanying certificates and plans and any other information provided by the applicant/agent; representations made by bodies or persons consulted on the application; any submissions supporting or objecting to the application; any decision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

Applications

	Site	Application No.	Ward	Recommendation	Contact Officer
6	Land South of Bernard Close. Berkeley Homes Site, Cassington Road, Yarnton	10/01302/F	Yarnton, Gosford and Water Eaton	Approval	Caroline Roche
7	50 Market Square, Bicester, OX26 6AJ	11/01304/F	Bicester Town	Approval	Gemma Magnuson
8	Land South West Of The Mead, Woodstock Road, Yarnton	11/01356/F	Yarnton, Gosford and Water Eaton	Approval	Tracey Morrissey
9	Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire	11/01372/CM	Kirtlington	Advise Oxfordshire County Council that Cherwell District Council has reservations about the scheme.	Tracey Morrissey
10	Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire	11/01402/CM	Kirtlington	Advise Oxfordshire County Council that Cherwell District Council has concerns about the proposal.	Tracey Morrissey

Agenda Item 6

10/01302/F



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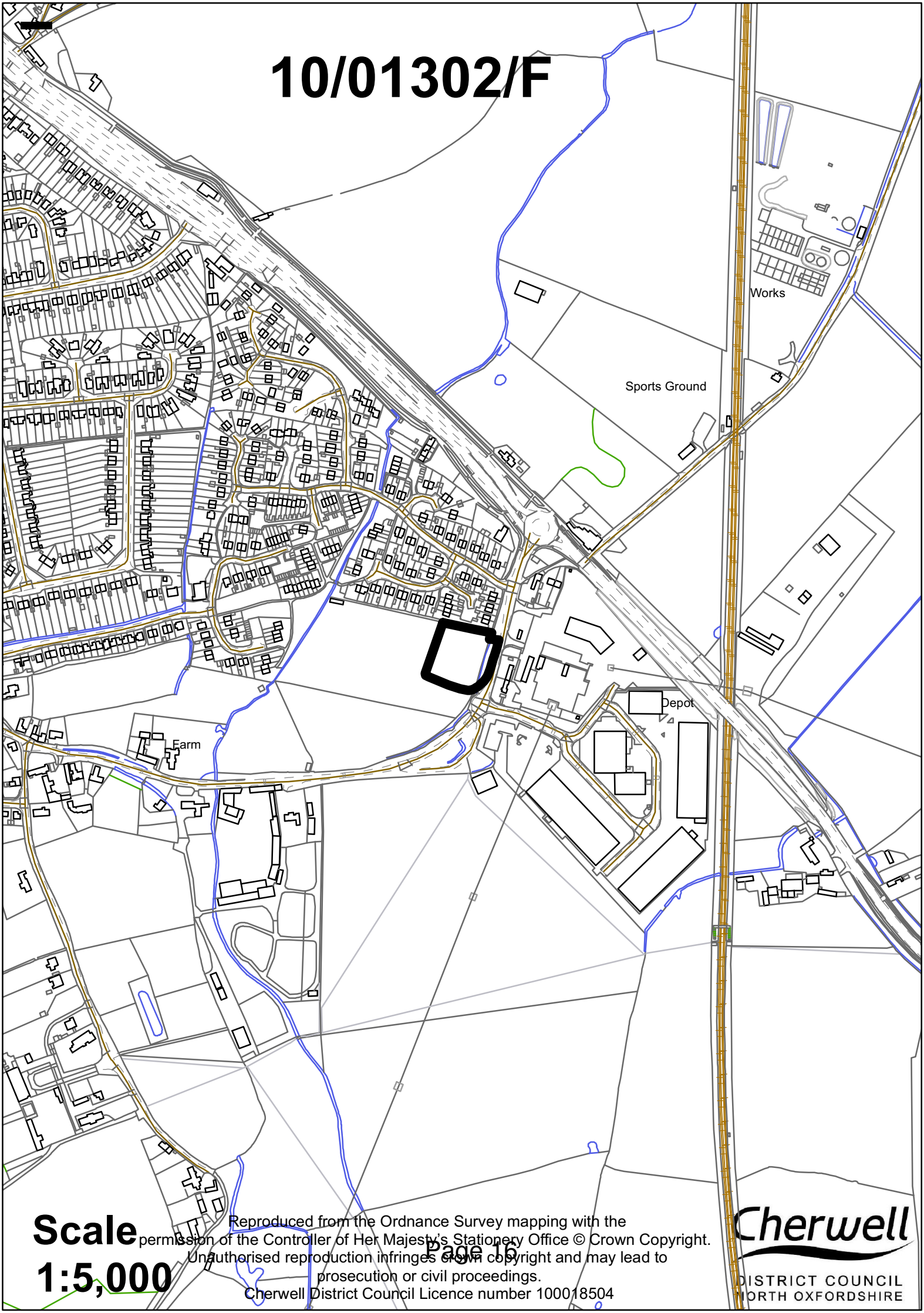
Cherwell DISTRICT COUNCIL NORTH OXFORDSHIRE

10/01302/F



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Cherwell DISTRICT COUNCIL NORTH OXFORDSHIRE

Application No: 10/01302/F	Ward: Yarnton, Gosford and Water Eaton	Date Valid: 20 July 2010
Applicant:	Berkeley Homes (Oxford & Chiltern) Ltd Abingdon	
Site Address:	Land South of Bernard Close. Berkeley Homes Site, Cassington Road, Yarnton	

Proposal: Erection of Extra Care Home

1. Site Description and Proposal

1.1 This report is an update to a report which was considered by Members at Planning Committee on 4th November 2010. The previous report is attached for information.

1.2 Members were minded to approve the application for a 50 unit extra care proposal subject to;

a) The Local Highway Authority agreement that the parking provision is sufficient
b) The completion of a S106 agreement to secure the delivery of affordable housing with a cascade mechanism to secure up to 30% based on the viability of the scheme and availability of grant funding
c) The completion of an agreement or receipt of a unilateral undertaking to secure remaining necessary contributions
d) conditions

1.3 In relation to a) above at the committee meeting on 4th November Members were advised that the Local Highway Authority had been satisfied that the parking provision was sufficient given the use of the site but sought to ensure that the units were age restricted to residents over 65 years of age. An appropriate condition had already been included in the draft conditions. However since November 2011 local residents have contacted the Council to express concern over the proposed development, especially in relation to the provision of parking. These matters will be discussed further in the main body of the report.

1.4 In relation to b) above the applicants were reluctant to enter into such agreement at the time but instead commenced with a full viability appraisal which sought to demonstrate that the scheme was not sufficiently viable to support and secure an affordable housing contribution. This is discussed in greater detail in the main body of the report.

1.5 In relation to c) the applicants are still willing to submit a unilateral undertaking to cover contributions towards bins, travel plan monitoring and libraries.

1.6 In relation to d) it is not expected that there would be any substantial changes to the conditions but for clarity these are set out at the end of this report.

1.7 Planning History

08/02541/F – Erection of 168 dwellings - approved
08/02594/F – Erection of 64 bed nursing home – approved

2. Application Publicity

2.1 The application has not been re-advertised since it was last considered by committee (there was no requirement to do so). However a number of residents have since sent in letters or emails expressing concerns as set out below in summary. The communications have been largely from residents who have recently moved into the completed properties on the new development adjacent to the site.

6 residents, including the Secretary of Yarnton Green Residents Association have commented on the proposal and their reasons for objecting are summarised below;

Material Planning issues

- C3 use is residential dwellings rather than residential institutions. Residents will therefore be able to live independently and more mobile and capable of driving – therefore more parking should be provided
- Extra vehicles associated with the extra care units could block or park in residents allocated spaces or obstruct the narrow roads and access junctions along Cresswell Close – making access by emergency vehicles difficult.
- Cannot be assumed that residents won't have cars
- Cherwell has been mislead in relation to the parking requirements
- High level of traffic movements will compromise pedestrian safety
- Development should not be integrated into Yarnton Green but instead have access from Cassington Road
- Badly planned scheme
- Evidence has been submitted relating to other schemes to demonstrate that additional parking is required
- It does not appear that the extra capacity required of the sewerage system has been taken into consideration
- Area is prone to flooding and the proposal will increase the risk
- Neighbour consultations may have complied with the letter of the law but the consultation period closed before many residents moved in therefore re-consultation should take place.
- Population density would be too high and not compatible with surrounding area

Non-material planning issues

- With existing residents against the proposal the new residents may not be welcomed into the community
- Potential end users have not been identified
- Future residents of new houses will not have had opportunity to comment on proposal
- Children would be at risk as a result of the proposal, request that if approved the scheme should not be used by residents who have been registered as sex offenders or who have a criminal record connected with drugs, sex, violence, theft or fraud

3. Consultations

3.1 **Yarnton Parish Council** has commented further on the proposal and wished to highlight concerns with parking and traffic management. A request was made for a further review of the parking spaces and for reassurances that overflow parking would not result in parking on the adjacent densely-populated roads where this could lead to obstructions to traffic flow and create dangers to children at play. It was suggested that access from Cassington Road would improve matters.

3.2 **The Local Highway Authority** have provided further comments which are incorporated into the main body of the report.

3.3 Other consultation responses remain as set out in the previous report.

4. Relevant Planning Policies

4.1 Adopted Cherwell Local Plan

H4 – Housing schemes for the elderly and people with disabilities
H5 – Affordable housing
H16 – Proposals for the development of the land shown on the proposals map at Yarnton as white land
TR1 – Improvements to or contributions towards transport infrastructure
C28 – Standards of layout , design and external appearance
C30 – Development compatible with the appearance, character, layout and scale of existing dwellings in the vicinity, provide appropriate standards of amenity.

4.2 Non-Statutory Cherwell Local Plan

H1b – Residential development permitted on sites within list and on proposals map
H6 – Provision of housing schemes for older people and for people with disabilities.
H14 – Proposals for development on land north of Cassington Road, Yarnton.

4.3 PPS3 - Housing

PPS5 – Planning for the Historic Environment

5. Appraisal

5.1 The main issues further to the previous consideration are;

- Affordable housing and planning contributions
- Highway safety (parking provision)
- Other neighbour concerns

5.2 Affordable Housing and planning contributions

Policy H5 of the adopted Cherwell Local Plan states that;
Where there is a demonstrable lack of affordable housing to meet local needs, the district council will negotiate with developers to secure an element of affordable housing in substantial new residential development schemes. The district council will need to be satisfied that such affordable housing:-

i) is economically viable in terms of its ability to meet the need identified
ii) will be available to meet local needs long term through secure arrangements being made to restrict the occupancy of the development
iii) is compatible with the other policies in this plan.

5.3 The application is before Members for a second time as the applicants were not willing to enter into a section 106 to secure the delivery of affordable housing even with the inclusion of a cascade mechanism to secure up to 30% affordable housing. Their reluctance was largely down to the fact that they considered that it could be demonstrated that the scheme was not viable with any affordable housing contribution. Policy H5 only requires the provision of affordable housing where it is demonstrated to be viable. The applicant has submitted information which has now been appraised by the Council's Housing Team and an external consultant. Officers, based on expert advice, are satisfied the information submitted demonstrates that as a market scheme the development of extra care in this circumstance is unlikely to be viable with affordable housing. Therefore it would be unreasonable for the Council to either refuse the application based on the lack of affordable housing or pursue the requirement for affordable housing.

5.4 The applicant has however advised that discussions are ongoing with a Registered Social Landlord (RSL) to deliver an extra care scheme on the site involving affordable housing but not secured through a S106. Therefore it is possible that even without a S106, with the benefit of grant funding, a whole or partial affordable housing scheme may be forthcoming on the site. This would obviously be a positive outcome but unfortunate that the affordable units will not be secured for future retention.

5.6 At the time of the earlier consideration of this application the applicants had provided general agreement to pay sums in relation to libraries, bins and travel plan monitoring. The situation remains unchanged and it is hoped that a unilateral undertaking will be submitted shortly. This will be required prior to issuing a decision in the event of the proposal being approved.

5.7 <u>Highway Safety (parking provision)</u>
Since the application was considered in November 2010 some residents that have moved into the new properties on the larger development site have raised objections to the proposal on the grounds that the proposal does not provide sufficient parking. This is an issue that was a concern to the Local Highway Authority and officers but was addressed through the submission of further information from the applicants and an extra care provider (Housing 21). Given the renewed concern and the delay in determining the application it is appropriate that the matter was reconsidered.

5.8 A further approach was made to Housing 21 as it was considered that as a provider of extra care accommodation they would have some experience of the level of parking required for such a form of accommodation. Housing 21 has advised that the parking arrangements of their schemes do vary, depending on discussions and the size of the site, but on the whole 0.25 spaces per unit is about the average provision. It has been calculated that the parking provision on this site would be 0.26 spaces per unit. There is some uncertainty about whether Housing 21 will operate this site but it was explained that as part of all new Housing 21 schemes a green travel plan is produced to identify and monitor travel arrangements to and from the scheme. Housing 21 also explained that of their residents many are not car users with about 15% of them having mild to moderate dementia so making it unlikely that they will drive. The majority of the car activity tends to be in the morning or early evening, when care staff are arriving and leaving the site.

5.9 The Local Highway Authority has also had the opportunity to comment further on the proposal and their comments are set out below;

5.10 *The initial response raised concerns that the proposed Extra Care Home's (50 apartments) parking levels were lower then those previously approved for the Nursing Homes (64 bed). The reduction of these levels were made on the assumption by the applicant's agent/consultant that the Extra Care Home would generate less traffic movements than that of the permitted Nursing Home i.e. in terms of the site's use, the number of bedrooms and that the occupiers will be elderly and require full time care. The proposed apartments are to consist of two bedrooms with each apartment being self-contained units. Such a layout does not appear to mean the occupiers will only be elderly or require full time care. If this is the case then the proposed parking levels are unlikely to be suitable as the apartments are more like standard residential units than an Extra Care unit i.e. parking likely to overflow out of the site. A robust justification for such parking levels was requested to be provided by the applicant.*

In response to comments from the Highway Authority the applicant's Transport Consultant stated that the proposed parking levels would meet Housing 21's (H21) operational needs and justified this by describing how H21 operates some 17,500 units of older person housing nationally and has considerable experience operating/running these types of developments. It was also confirmed that the occupants of H21 developments are generally around the age of 80 and around 15% unfortunately can suffer from dementia - therefore car ownership in these types of development is expected to be low. It is the Highway Authority's understanding that H21 would be leading this new build project and only requires a parking provision of 0.25 space per unit regardless of the size of each unit, such a ratio comes from H21's experience of running Extra Care Homes. The consultant also stated that if H21 were not satisfied with the level of parking they would ask Berkeley Homes to provide more.

With regard to the size of the apartments the consultant confirmed "that the two bedroom units are a Homes and Communities Agency preference and provides flexibility for the resident who may be placed within H21's care by County Council. Such residents could be downsizing from larger private accommodation and therefore need additional storage or a place to keep care equipment. In practice then, two bedroom units are rarely occupied by more than one or two persons sharing one bedroom. It is also worth noting that the facility has a large communal kitchen and dining area where residents will be catered for - again most residents need this additional level of care and therefore will not be venturing out in a private motor vehicle".

A Travel Plan was requested for this development to reduce staff car travel, hopefully this can be imposed by planning condition.

Looking through the information provided by the applicant and the concerns raised by Yarnton Green Residents' Association the Highway Authority still has concerns with the level of parking being offered; although I accept the level of parking may be appropriate for developments run by H21 due to their experience. However a view has to be taken on the site's use and not who runs the development as this may change in the future. To overcome the parking concern it was recommended in the email dated 26th October 2010 to CDC that a condition be imposed restricting the

age of occupants of the development to 65+. Such a condition would need to be monitored by CDC. A further condition should also be considered to only allow the site to be occupied by residents who cannot look after themselves without extra care i.e. specified use only. Therefore the opinion/assessment from last year remains unchanged.

5.11 Whilst the Council has approved schemes for extra care accommodation it is understood that none of them are yet fully operational therefore the Council can not draw on its own experience of parking requirements. It would therefore seem reasonable that the experience of an extra care provider should be a reliable source of guidance and as such, given the lack of overall objection from the Local Highway Authority it is not considered that lack of parking and highway safety would be as sound reason for refusal.

5.12 Other neighbour concerns

Impact on flooding and water infrastructure

As this is an issue that was raised in the letters of objection it is appropriate to reiterate that the impact of the development on flooding and water infrastructure was fully explored in relation to the full application for 168 dwellings and the original nursing home application. There was sufficient supporting information on these applications for the Council to be satisfied that the implications of flooding and water infrastructure could be appropriately dealt with. Further detail was also required through conditions and these have now been discharged. The submission sets out that the required measures have now been put in place through the development of the residential site. Therefore it is considered that the proposal for the extra care units will not result in any additional flooding or issues with the supply of water and disposal of waste water. It is understood that Thames Water has approved the improved sewerage system and considered it to be adequate for the proposed development.

5.13 **Occupancy of development**

A small number of residents have expressed a concern that future residents of the extra care facility may pose a danger to children already residing close to the site. The Council as Local Planning Authority cannot control the occupancy of the development to protect against this as it is not a planning consideration. However it is possible for reasons of highway safety to restrict the use of the premises to the proposed use only and age restrict the occupancy. This may go some way to alleviating residents concerns.

5.14 Conclusion

The principle of the development of this site for nursing care has previously been established as has the use of the site for extra care provision through the resolution made at Planning Committee on 4 November 2010. Members were minded to approve the scheme subject to securing a level of affordable housing. This has not been possible as it has been demonstrated through viability testing. Parking has been reconsidered in light of objections from neighbouring residents. In relation to both these matters, the inability to secure affordable housing and parking provision are not considered to be sound reasons for refusal therefore the proposal is recommended for approval on this basis.

6. Recommendation

Approval subject to;

a) **The completion of an agreement or receipt of a unilateral undertaking to secure the remaining necessary contributions**

b) **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 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. PL10 Rev B - Site Location Plan, Proposed Site/Roof Plan

Drawing no. PL11 Rev A - Proposed Floor Plans

Drawing no. PL12 - Proposed Elevations (Context)

Drawing no. PL13 Rev A - Proposed Elevations sheet 1 of 3

Drawing no. PL14 - Proposed Elevations sheet 2 of 3

Drawing no. PL15 - Proposed Elevations sheet 3 of 3

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 within PPS1: Delivering Sustainable Development

3 That samples of the brick, stone and render to be used in the construction of the walls of the extra care building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the samples so approved.

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

4 That samples of the slate/tiles to be used in the covering of the roof of the extra care building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the samples so approved.

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

5 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 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 C28 of the adopted Cherwell Local Plan.

6 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 C28 of the adopted Cherwell Local Plan.

7 That full design details of the windows and doors shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the approved details.

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

8 No development shall take place on the site until the applicant(s), or their agents or successors in title, has arranged an archaeological watching brief to be maintained during the course of building operations or construction works on the site. The watching brief shall be carried out in accordance with a written specification and by a professional archaeological organisation acceptable to the Local Planning Authority.

Reason - To safeguard the inspection and recording of matters of archaeological and historic importance on the site, to comply with Government advice in PPS5: Planning for the Historic Environment.

9 Prior to the first occupation of the extra care building the vision splays for the development shall be provided and shall not be obstructed by any object, structure, planting or other material.

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

10 The development shall be carried out in accordance with the details of the submitted

Travel Plan dated August 2010.

Reason - In the interests of sustainability and to ensure a satisfactory form of development.

11 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.

12 Prior to the first use or occupation of the development hereby permitted, covered cycle parking facilities shall be provided on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The covered cycle parking facilities so provided shall thereafter be permanently retained and maintained for the parking of cycles in connection with the development.

Reason - In the interests of sustainability and to ensure a satisfactory form of development.

13 That the rated level of noise emitted from any externally located plant or equipment shall not exceed the background sound pressure level by more than 5dB when measured in accordance with British Standard BS 4142:1997 nearby dwellings.

Reason - To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply with advice in PPG24: Planning and Noise.

14 That service vehicles shall not arrive at or depart from site before 08:00 hours or after 18:00 hours on any day. (Emergency services and other related emergency organizations being exempt).

Reason - In order to safeguard the amenities of the area and to comply with Policies C31 and ENV1 of the adopted Cherwell Local Plan.

15 Any vegetation to be cleared that is likely to support breeding birds shall be undertaken outside of the breeding bird season (March to August inclusive).

Reason - To ensure that the development will not cause harm to any protected species or its habitat in accordance with Policy C2 of the adopted Cherwell Local Plan.

16 Any trees proposed for felling as part of the scheme hereby approved must be checked for use by bats by a suitably qualified ecologist prior to felling and their advice must be followed.

Reason - To protect habitats of importance to nature conservation from any loss or damage in accordance with the requirements of PPS 9: Planning and Biodiversity and Policy C2 of the adopted Cherwell Local Plan.

17 The development hereby approved shall be carried out in accordance with the

surface water drainage scheme, approved for the purposes of application number 08/02541/F.

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

18 Prior to the commencement of development a scheme for the provision and management of a buffer zone alongside the water course on the frontage of the site shall be submitted to and agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The scheme shall include:

Plans showing the extent and layout of the buffer zone

Details of the planting scheme (for example native species)

Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term.

Reason: Development that encroaches on riparian habitat has a potentially severe impact on their ecological value. This is contrary to government policy in Planning Policy Statement 1 and Planning Policy Statement 9 and to the UK Biodiversity Action Plan. Land alongside any water course is particularly valuable for wildlife and it is essential this is protected. Article 10 of the Habitats Directive also stresses the importance of natural networks of linked corridors to allow movement of species between suitable habitats, and promote the expansion of biodiversity. Such networks may also help wildlife adapt to climate change.

19 The development hereby approved shall be carried out in accordance with the waste water disposal details approved, for the purposes of application number 08/02541/F.

Reason: To ensure that increased flows into the system are accounted for before the development commences and to protect the environment.

20 That prior the first occupation of any part of the development hereby permitted fire hydrants shall be provided or enhanced on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.

Reason - To secure the provision of essential community infrastructure on site.

21 That full details of the enclosures along all boundaries and within the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development, and such means of enclosure, shall be erected prior to the first occupation of the extra care building.

Reason - To ensure the satisfactory appearance of the completed development, to safeguard the privacy of the occupants of the existing and proposed dwellings and to comply with Policies C28 and C30 of the adopted Cherwell Local Plan.

22 That the development hereby approved shall be used solely for the purpose of extra care accommodation as set out in paragraphs 3 and 4 of the applicants letter dated 07 October 2010 and for no other purposes whatsoever, including any other purpose in Class C2 and C3 of the Schedule of the Town and Country Planning (Use

Classes)(Amendment)(England) Order 2005.

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.

23 That the extra care units of accommodation hereby approved shall be occupied only by residents of 65 years of age and over.

Reason: In the interests of highway safety and to ensure the use of the building does not result in a requirement for further parking provision which cannot be provided on site and to comply with Government advice contained in PPG13: Transport.

PLANNING NOTES

Attention is drawn to a Legal Agreement related to this development or land which has been made pursuant to Section 106 of the Town and Country Planning Act 1990, Sections 111 and 139 of the Local Government Act 1972 and/or other enabling powers.

No materials, plant or temporary structures of any kind should be deposited on or adjacent to the public footpath 12, that may obstruct the public from using the route while development takes place, nor should there be any encroachment on to the existing width, or change in the route of the path.

Under the terms of the Water Resources Act 1991, and the Land Drainage byelaws 1981, the prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 8 metres of the top of the bank of the Rowel Brook main river.

The site is on low permeability alluvium over clay. Any visibly contaminated or odorous material encountered on the site during the development work, must be investigated. The Planning Authority must be informed immediately of the nature and degree of contamination present.

Any SUDS from roads and car or lorry parking areas would need to incorporate suitable measures for protection of water quality. This is likely to include measures to mitigate the discharge of hydrocarbons to ground or surface water. Details of treatment techniques are outlined in CIRIA Report C609. The Environment Agency would wish to be consulted on any protection measures.

There must be no direct discharge of listed substance direct to groundwater, as this would be a breach of the Groundwater Regulation 1998. In particular hydrocarbons in drainage from road/car parking areas. As such the EA require verification of the drainage arrangements for the car parking area. Any permeable paving for areas of car parking areas must not discharge direct to ground water.

The EA would require confirmation of whether the permeable paving for car parking discharge to ground. If there is a discharge to ground the EA would require confirmation of the depth of the base of the permeable paving area, any attenuation incorporated in the permeable paving area and the depth of groundwater at this site.

The Control of Pollution (Oil Storage) (England) Regulations 2001 apply to all above ground water commercial oil storage in tanks over 200 litres in volume. This means that tanks should be fit for purpose and have secondary containment (or bund) sufficient to contain

110% of the tanks contents. The secondary containment must be impermeable to oil and water and not have any drainage valve. All the tanks ancillary equipment (valves, deliver hose, gauges, vent) must be within the cartilage of the secondary containment bund. The regulations have other stipulations and full information can be found at www.environment-agency.gov.uk/osr or from Pollution Prevention Guidance Note 2 for Above Ground Tanks or PPG26 for Drums and Intermediate Bulk Containers.

From 6 April 2008 it is a legal requirement to have a site waste management plan (SWMP) for all new construction projects worth more than £300,000.

Should Members agree with the recommendation a summary of reasons for the grant of planning permission is set out below.

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

The Council as local planning authority has determined the application having taken into account all representations received. Although the site is not allocated for development in the adopted Cherwell Local Plan the Council considers the following material considerations sufficient to justify the granting of planning permission. The site is identified for development under Policy H14 of the Non Statutory Cherwell Local Plan 2011. It is considered that this application would not cause harm to existing residential or visual amenity, highway safety, existing tress on the site, existing ecology, archaeology or drainage. As such and having regard to the adopted Cherwell Local Plan, the Non Statutory Cherwell Local Plan 2011 and al other material considerations, including Government guidance, the proposal is in accordance with H4, TR1, C28 and C30 of the adopted Cherwell Local Plan.

CONTACT OFFICER: Caroline Roche TELEPHONE NO: 01295 221816

Application No: 10/01302/F	Ward: Yarnton, Gosford and Water Eaton	Date Valid: 20 July 2010
Applicant:	Berkeley Homes (Oxford & Chiltern) Ltd Abingdon	
Site Address:	Land South of Bernard Close. Berkeley Homes Site, Cassington Road, Yarnton	

Proposal: Erection of Extra Care Home

1. Site Description and Proposal

1.1 The site is located to the south of Bernard Close and west of Cassington Road, in the north eastern corner of the site currently being developed for residential housing. The site already benefits from planning permission for a 64 bed nursing home.

1.2 This scheme differs as 50 extra care units are proposed. The units comprise one or two bedrooms, a private bathroom and a private kitchen and living area. Although the number of units is less there is an increase in the number of proposed bedrooms and the overall internal floor space. This increase results in a slightly larger footprint and scale of building, with a reduced provision of outside space and car parking.

As well as the private living accommodation the building includes provision for a communal lounge and dining area, a kitchen, laundry, staff room and office, buggy store, hobby room and one guest bedroom.

The access to the site is gained off the access road into the new residential development. There is provision on site for 12 parking spaces and 1 disabled space with cycle parking also being provided on site.

A communal garden is provided with semi-private patios provided for ground floor apartments. The site itself is proposed to be bounded by a 1.2 m high post and rail fence and a 1.5 m high stone wall with defensive planting.

Planning History

08/02541/F – Erection of 168 dwellings
08/02594/F – Erection of 64 bed nursing home – approved

2. Application Publicity

2.1 The application was advertised by way of press notice, site notice and neighbour notification letter. The final date for comment was 8 October 2010. No letters of objection have been received.

3. Consultations

3.1 **Yarnton Parish Council** raises no objections

3.2 **The Local Highway Authority** submitted a holding objection as the submission lacked a robust justification on the level of parking being provided. However at the time of writing the report it is understood that the applicant has provided the Highway Authority with further details which address the concerns. An update will be provided at Committee.

The Council's Chief Engineer and Building Control Manager raises no objections as the infrastructure is designed to accommodate such a change.

The Council's Strategic Housing Officer has no objections with regard to the principle of the change to an extra care facility but would want to ensure that at least 30% of the units were secured in perpetuity as affordable.

The Council's Ecology Officer is satisfied that as the site has been cleared there is no need to make full comments. However should any vegetation have grown back consideration should be given to nesting birds during further clearance is recommended, avoiding the nesting season March-September inclusive.

The Council's Landscape Architect has made detailed comments in relation to landscaping issues, many of which can be addressed through an appropriately worded landscaping condition. However in summary he states;

- Southern and eastern elevations of the building will have marked visual impact on the street scene and must be mitigated by large trees. These will have benefit for Cassington Road and the access road.
- Trees should be planted in the car park area
- A hedge should be provided for privacy to the residents garden
- The landscaping should take account of the fact that for many residents the landscaping context is only accessible visually through windows or patio doors.
- Account should be taken of the fact that elderly residents may need assistance with walking either with human support or sticks and frames. Some may also be in wheelchairs.
- Plants with seasonal variety should be incorporated into the landscaping as well as those that attract wildlife such as butterflies

The Environment Agency has no objections to the proposal provided the comments and conditions from earlier letters relating to the previous application are taken into consideration. The new proposal will not affect the agreed flood risk assessment.

The County Council, as the Mineral Planning Authority raises no objections to the application on the grounds of mineral sterilization.

Thames Valley Police Crime Prevention Design Advisor has no objections to the application as the submission refers to Secured by Design which is an important factor in ensuring the safety and security of residents. It is requested that requiring a Secured by Design accreditation is included as a condition or informative if permission is granted.

Thames Water makes the following comments (in summary);

- With regard to surface water drainage it is the responsibility of the developer to make proper provision for drainage to ground, water courses or a suitable sewer.
- There is an inability of the existing waste water infrastructure – a condition should be imposed requiring that development shall not commence until a drainage strategy detailing any on and/or off site drainage works has been submitted to and approved by the local planning authority.
- Petrol/oil interceptors should be fitted to all car parking facilities
- A fat trap should be installed on all catering establishments
- In relation to water infrastructure an informative should be attached

4. Relevant Planning Policies

4.1 Adopted Cherwell Local Plan

H4 – Housing schemes for the elderly and people with disabilities
H16 – Proposals for the development of the land shown on the proposals map at Yarnton as white land
TR1 – Improvements to or contributions towards transport infrastructure
C28 – Standards of layout , design and external appearance
C30 – Development compatible with the appearance, character, layout and scale of existing dwellings in the vicinity, provide appropriate standards of amenity.

4.2 Non-Statutory Cherwell Local Plan

H1b – Residential development permitted on sites within list and on proposals map
H6 – Provision of housing schemes for older people and for people with disabilities.
H14 – Proposals for development on land north of Cassington Road, Yarnton.

PPS3 - Housing

PPS5 – Planning for the Historic Environment

5. Appraisal

5.1 The main issues for consideration of this application are;

- Planning policy
- Visual impact, design and setting of listed building
- Neighbour impact
- Impact on flooding and water infrastructure
- Biodiversity
- Highway safety
- Planning Contributions and affordable housing

5.2 Planning Policy

The adopted Cherwell Local Plan allocates the wider site of which this site forms a small parcel of, as 'white land' as part of Policy H16. It states;

'*During the period of this plan the Council will resist proposals for the development of land shown on the proposal map at Yarnton as white land'*.

Policy H1b of the Non-statutory Cherwell Local Plan, a material consideration in the assessment of applications, allows the development of the wider site for residential

development and Policy H14 sets out criteria that the development should meet.

The development of the wider site for residential was established through the approval of an outline planning application in 2007. In May 2009 planning permission was granted for the development of the wider site for 168 dwellings. This excluded the parcel of land which is the subject of this application. In April 2009 planning permission was granted for the construction of a 64 bed nursing home on the site. Whilst this form of development did not form part of the criteria set out in Policy H14 of the Non-Statutory Cherwell Local Plan it was considered acceptable as a C2 nursing home was of a similar character to that of the residential environment in which it would sit.

Whilst the developments referred to above did not comply with Policies H16 of the adopted Cherwell Local Plan Members were minded to approve them and they proceeded through the appropriate departure procedures. The applications were accepted by the Government for the South East as departures and the applications permitted. Therefore the principle of development of residential and nursing accommodation on the site is established. The residential scheme is currently under construction and there remains an extant consent for the nursing home.

Policy H4 of the adopted Cherwell Local Plan and Policy H6 of the Non-Statutory Plan encourage schemes for housing for the elderly in locations which are within convenient reach of shops, community facilities and public transport. The location of the development is considered to be sustainable given its village location and the good access to public transport. Therefore these policies are complied with.

As the principle of development is established and this current application is of a similar nature to the nursing home it is considered that the principle of an extra care development on this site is acceptable.

Compliance with other policies referred to above will be considered throughout the rest of the report.

Visual Impact, design and setting of listed buildings

In terms of orientation the proposed building is on the same footprint of the previously approved nursing home. However due to the creation of larger private units of accommodation, although fewer in number, a small increase in the length of each wing and the depth of the building is proposed. This increase amounts to approximately 1 metre on each elevation. Similarly the accommodation now comprises of a ground floor and two upper floors. Whilst this amounts to an additional floor of accommodation the actual increase in height is between approximately 0.1m and 2 metres in some places. This relatively small increase in height is achieved by accommodating the majority of the upper floor within the roof space. The mass of the building inevitably appears larger than that previously approved, the residential properties on Bernard Close and the newly constructed buildings on the rest of the site. However, in reality the highest part of the roof (the corner of Cassington Road and the access road) is no higher that the approved and built corner dwelling on the opposite side of the access road). The design of the corner also replicates the opposite corner dwelling creating a focal point and a clear entrance into the site.

The building has been designed with a variety of ridge and eaves heights and a mix

of stone and brick and tile and slate. This choice of materials matches those used on the rest of the site. There is also some variety in the windows. All these elements help to break up long elevations whilst internally a uniform layout is achieved.

Areas of communal garden are provided to the north east and south of the proposed building, as was the case with the previous scheme for the nursing home. This provides an opportunity for landscaping which will soften the public elevations and provides a set back from road frontages and existing residents.

The courtyard into which the access leads is created by the layout of the building and accommodates the main pedestrian access into the building, the parking area and some small garden areas which are bounded by new hedges.

The proportions of the building are to a certain extent dictated by the institutional nature of the building however it has been designed so as to integrate into the rest of the new development. It will appear large but it is not considered to be detrimental to the character and appearance of the area.

The nearest listed property within the vicinity of the site is located approximately 37 metres to the north east of the proposed building. It is separated by Cassington Road and an element of existing and proposed vegetation. The listed building has an unusual setting as it stands alone on a parcel of land surrounded by access roads and industrial development to the rear. It also lacks a defined curtilage. Whilst the proposed building will to some extent affect the wider setting of the listed building it is not considered that the affect will be detrimental to the immediate setting of the building.

Based on the above assessment it is considered that the development complies with Policy C28 of the adopted Cherwell Local Plan in relation to design standards and guidance within PPS5 relating to the historic environment.

Neighbour impact

There are two properties across the Cassington Road, directly opposite the proposed building. These are approximately 36 metres away and separated by the road. Whist the outlook form the front of the property will change the adverse impact will be minimal as sunlight, day light and privacy are unlikely to be affected. The nearest property to the development is 12 Cassington Road. A distance of 16 metres is retained between the new building and its side elevation. This is the same as was approved with the nursing home. Whilst the building now accommodates an additional floor the overall height of this element is only 0.1m greater than that already approved. The internal layout has also changed and the nearest windows in the side elevation serve the living areas and bedrooms to a small number of units. However overlooking should be minimal as a result of the planting along the boundary. It is not considered that the scheme is materially different in relation to its impact on 12 Cassington Road.

It is also relevant to consider the impact of the development on the future residents of the newly constructed properties. The properties along the access road are located a minimum of 17 metres from the south elevation of the building. These are predominantly two storey properties. Although there is an additional storey proposed for the extra care building it is not considered that the dominance or

overlooking resulting from the building will be significantly greater than that which would have occurred from the nursing home proposal. The distance between the frontages is not uncommon and the same distances can actually be seen in relation to some of the properties on Bernard Close to the north of the site.

Given the above assessment it is not considered that the proposal will cause undue harm to the residential amenities of existing or future residents it is therefore considered that the proposal complies with Policy C30 of the adopted Cherwell Local Plan.

Impact on flooding and water infrastructure

The impact of the development on flooding and water infrastructure was fully explored in relation to the full application for 168 dwellings and the original nursing home application. There was sufficient supporting information on these applications for the Council to be satisfied that the implications of flooding and water infrastructure could be appropriately dealt with. Further detail was also required through conditions and these have now been discharged. The submission sets out that the required measures have now been put in place through the development of the residential site. Therefore it is considered that the proposal for the extra care units will not result in any additional flooding or issues with the supply of water and disposal of waste water.

Biodiversity

Under the previous consents the site has been cleared. In relation to biodiversity the development was permitted as this part of the site was not considered to support any protected species. Given that the site has now been cleared it is unlikely that this position has altered. However there are some retained but not protected trees and vegetation along the northern and eastern boundaries. There is also a drainage ditch between the Cassington Road and the proposed garden therefore the developers will be required to have regard to these features.

Highway safety

The Local Highway Authority had submitted a holding objection on the grounds that the submission did not adequately describe the way in which extra care units of accommodation operate or a justification as to the level of parking proposed. There was concern that as the units were self contained and many of them contained up to two bedrooms that the occupants could be younger, more mobile and potential accommodate two residents in each, potentially resulting in some residents having cars, increasing the requirement for parking provision. However this holding objection was relayed to the developers who are now liaising with the Local Highway Authority. It is understood that further information has been provided to the Highway Authority and this is being considered. It is likely that with appropriate conditions relating to how the building is operated and age restrictions that the matters can be appropriately addressed. However it is worth noting that in is the current intention for the building to be operated by Housing 21. Housing 21 have confirmed that the parking provision is sufficient for the way in which their facilities run. It is likely that issue will be clarified prior to the date of Committee therefore an update will be provided.

Planning Contributions and affordable housing

The previous application for a nursing home included a legal agreement between the applicants and the County Council, securing contributions towards library stock

and travel plan monitoring.

Whist the application has been submitted on the basis of the accommodation being under a C2 use class (communal homes for the elderly) officers have assessed the application on the basis that the use is within C3 (sheltered housing with flats, service flats and apartments) as the units are self-contained and residents could, if they choose, not utilise the communal facilities thus making the units more akin to residential flats. This categorisation therefore triggers the requirements for additional infrastructure contributions such as affordable housing, monetary contributions towards the provision of bins and additional library contributions. The applicant has provided a general agreement to pay the additional sums in relation to libraries and bins but has queried the requirement in relation to affordable housing.

The Council requires that 30% of the units be secured in perpetuity as affordable units. The Older Peoples Housing Strategy identified the need for 81 extra care units in Kidlington (for affordable and market) and 109 units in Rural South by 2021. There will be very few opportunities to provide these due to general lack of suitable development sites in the area.

It is likely that if an operator such as Housing 21 develop the scheme 100% of the units will be affordable, however the Council cannot control this so would seek to secure 30% affordable housing through a legal agreement. The applicant has however stated that the site cannot support any affordable housing due to its viability. An initial viability assessment was submitted by the applicant which they state demonstrates that the scheme would not be viable if it provided affordable units of accommodation. The viability appraisal needs further review and consideration by officers in order that Members are appropriately advised. It is anticipated that this will be completed by the time of the committee and an update will be provided. Policy H5 of the Cherwell Local Plan identifies that affordable housing should only be required if it is viable to do so. If the scheme is demonstrated to unviable with the requirement for affordable housing it would be unreasonable to refuse the application on this basis. However if grant funding were available that would alter the viability and could make the delivery of affordable housing feasible as part of the scheme. At the current time a bid has been made for HCA funding and the outcome of the bid is unknown. In addition both this Council and Oxfordshire County Council have already committed to providing some grant funding to facilitate affordable provision within the scheme, although it is unlikely that this would amount to 30% affordable housing.

In the circumstances it is considered necessary to secure a legal agreement to deliver affordable housing as part of the scheme as at the very least the grant from the Council's would ensure some provision. However if there was further grant available from the HCA or the scheme was shown to be sufficiently viable to make some contribution then the Council would seek to secure up to 30% affordable housing within the scheme through a S106 agreement. Given the present uncertainty it is recommended that the S106 is subject to a cascade mechanism that required 30% affordable housing and if this was shown not to be viable to secure as much affordable housing as could be acheived with the grant available.

Conclusion

The principle of the development of this site for nursing care has previously been established. This application will alter the type of accommodation provided,

although ultimately it will still provide care for the elderly or infirm. Whilst officers consider the units to fall within a different use class because of the facilities provided the nature of the building remains similar. The building itself will increase in size from that previously approved but it is not considered that these changes will result in any detriment to neighbouring amenities or the visual appearance of the area. It is likely that issues relating to parking provision can be resolved through the provision of further information and the inclusion of planning conditions. The applicant is prepared to pay the additional contributions resulting from the changes to the proposal but is submitting that the development is not viable if the scheme in required to provide affordable units. However the grant from the Councils can ensure at least some affordable housing can be delivered as part of the scheme and a cascade mechanism is proposed in a S106 agreement to maximize what can be delivered.

6. Recommendation

Approval subject to;

a) The Local Highway Authority agreement that the parking provision is sufficient
b) The completion of a S106 agreement to secure the delivery of affordable housing with a cascade mechanism to secure up to 30% based on the viability of the scheme and availability of grant funding
c) the completion of an agreement or receipt of a unilateral undertaking to secure the remaining necessary contributions
d) the following conditions

1. SC 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 and documents: 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 within PPS1: Delivering Sustainable Development
3. SC 2.2AA Samples of walling materials (RC4A) 'brick, stone and render' 'extra care building'
4. SC 2.2BB Samples of roofing materials (RC4A) 'slate/tiles' 'extra care building'
5. SC 3.0A Submit Landscaping Scheme (RC10A)
6. SC 3.1A Carry out landscaping scheme (RC10A)
7. SC 5.5AB Submit Design Details (RC4A) 'windows and doors'
8. SC5.9AB Archaeological Watching Brief (RC28AA)
9. Prior to the first occupation of the extra care building the vision splays for the development shall be provided and shall not be obstructed by any object, structure, planting or other material. (RC13BB)
10. The development shall be carried out in accordance with the details of the submitted Travel Plan dated August 2010. (RC66A)
11. SC 4.13CD Parking and Maneuvering Area Retained. (RC13BB)
12. SC 4.14CC Cycle Parking (RC66A)
13. That the rated level of noise emitted from any externally located plant or equipment shall not exceed the background sound pressure level by more than 5dB when measured in accordance with British Standard BS 4142:1997 nearby dwellings. (RC53AB)
14. That service vehicles shall not arrive at or depart from site before 08:00 hours or

after 18:00 hours on any day. (Emergency services and other related emergency organizations being exempt). (RC49A)

15. Any vegetation to be cleared that is likely to support breeding birds shall be undertaken outside of the breeding bird season (March to August inclusive). (RC86A)
16. Any trees proposed for felling as part of the scheme hereby approved must be checked for use by bats by a suitably qualified ecologist prior to felling and their advice must be followed. (RC85A)
17. Development shall be carried out in accordance with the approved surface water drainage scheme. Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of the scheme.
18. Prior to the commencement of development a scheme for the provision and management of a buffer zone alongside the water course on the frontage of the site shall be submitted to and agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The scheme shall include:
    - Plans showing the extent and layout of the buffer zone
    - Details of the planting scheme (for example native species)
    - Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term.

    Reason: Development that encroaches on riparian habitat has a potentially severe impact on their ecological value. This is contrary to government policy in Planning Policy Statement 1 and Planning Policy Statement 9 and to the UK Biodiversity Action Plan. Land alongside any water course is particularly valuable for wildlife and it is essential this is protected. Article 10 of the Habitats Directive also stresses the importance of natural networks of linked corridors to allow movement of species between suitable habitats, and promote the expansion of biodiversity. Such networks may also help wildlife adapt to climate change.

19. Development in accordance with the waste water disposal details previous approved. Reason: Although we are not aware of any capacity issues for sewerage infrastructure this condition is needed to ensure that increased flows into the system are accounted for before the development commences to protect the environment.
20. SC 9.6A Fire hydrants (RC87A)
21. SC 3.7AA Boundary Enclosure Details (RC12AA)
22. That the building shall be used solely for the purpose of extra care accommodation as set out in the submission.
23. That the extra care units be occupied only by residents of 65 years of age and over. For reasons of highway safety.

Planning notes

1. Q1 – Legal agreement

2. No materials, plant or temporary structures of any kind should be deposited on or adjacent to the public footpath 12, that may obstruct the public from using the route while development takes place, nor should there be any encroachment on to the

existing width, or change in the route of the path.

3. Under the terms of the Water Resources Act 1991, and the Land Drainage byelaws 1981, the prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 8 metres of the top of the bank of the Rowel Brook main river.

4. The site is on low permeability alluvium over clay. Any visibly contaminated or odorous material encountered on the site during the development work, must be investigated. The Planning Authority must be informed immediately of the nature and degree of contamination present.

Any SUDS from roads and car or lorry parking areas would need to incorporate suitable measures for protection of water quality. This is likely to include measures to mitigate the discharge of hydrocarbons to ground or surface water. Details of treatment techniques are outlined in CIRIA Report C609. The Environment Agency would wish to be consulted on any protection measures.

There must be no direct discharge of listed substance direct to groundwater, as this would be a breach of the Groundwater Regulation 1998. In particular hydrocarbons in drainage from road/car parking areas. As such the EA require verification of the drainage arrangements for the car parking area. Any permeable paving for areas of car parking areas must not discharge direct to ground water.

The EA would require confirmation of whether the permeable paving for car parking discharge to ground. If there is a discharge to ground the EA would require confirmation of the depth of the base of the permeable paving area, any attenuation incorporated in the permeable paving area and the depth of groundwater at this site.

The Control of Pollution (Oil Storage) (England) Regulations 2001 apply to all above ground water commercial oil storage in tanks over 200 litres in volume. This means that tanks should be fit for purpose and have secondary containment (or bund) sufficient to contain 110% of the tanks contents. The secondary containment must be impermeable to oil and water and not have any drainage valve. All the tanks ancillary equipment (valves, deliver hose, gauges, vent) must be within the cartilage of the secondary containment bund. The regulations have other stipulations and full information can be found at www.environment-agency.gov.uk/osr or from Pollution Prevention Guidance Note 2 for Above Ground Tanks or PPG26 for Drums and Intermediate Bulk Containers.

From 6 April 2008 it is a legal requirement to have a site waste management plan (SWMP) for all new construction projects worth more than £300,000.

Should Members agree with the recommendation a summary of reasons for the grant of planning permission is set out below.

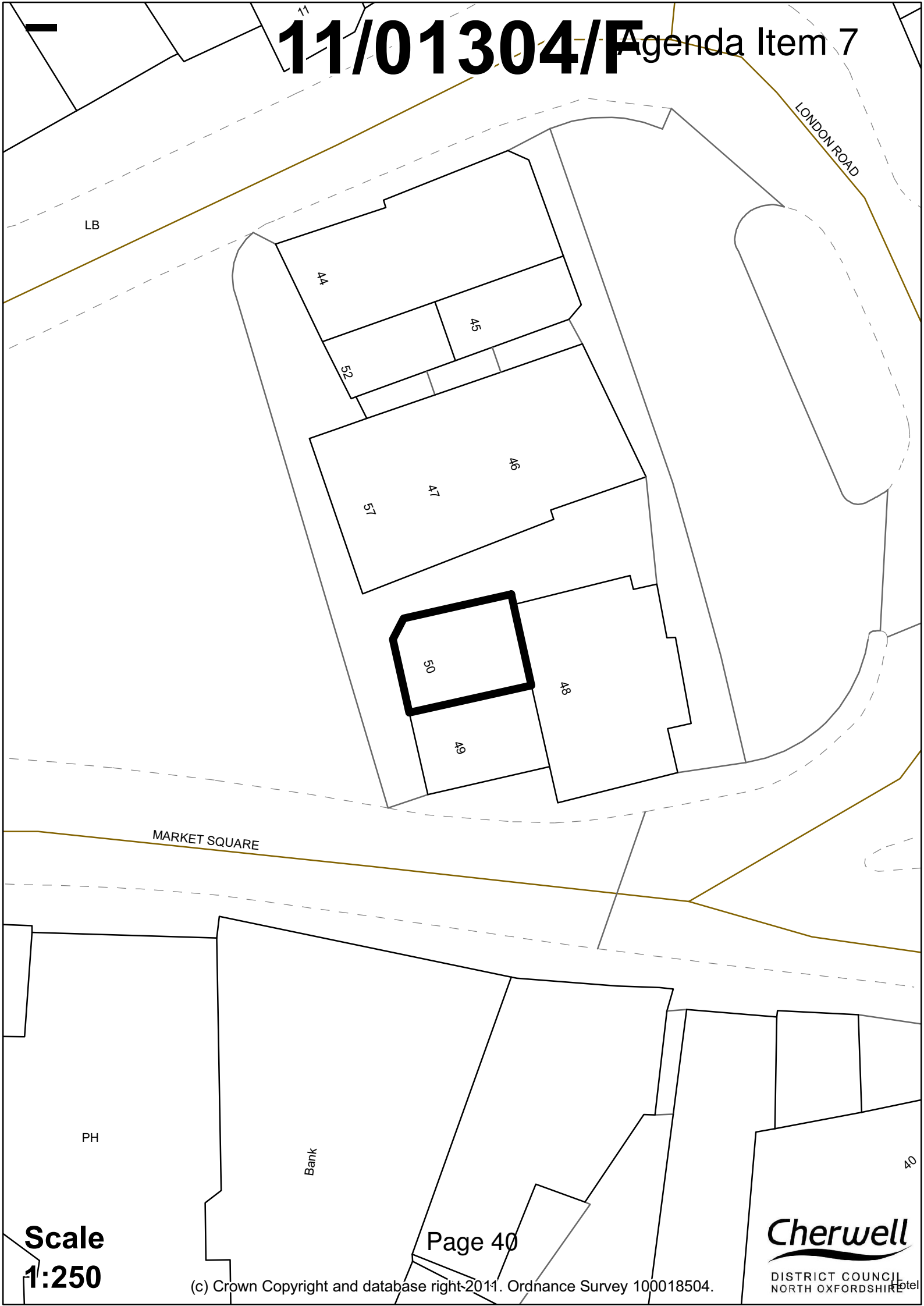
SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND

RELEVANT DEVELOPMENT PLAN POLICIES
The Council as local planning authority has determined the application having taken into account all representations received. Although the site is not allocated for development in the adopted Cherwell Local Plan the Council considers the following material considerations sufficient to justify the granting of planning permission. The site is identified for development under Policy H14 of the Non Statutory Cherwell Local Plan 2011. It is considered that this application would not cause harm to existing residential or visual amenity, highway safety, existing tress on the site, existing ecology, archaeology or drainage. As such and having regard to the adopted Cherwell Local Plan, the Non Statutory Cherwell Local Plan 2011 and al other material considerations, including Government guidance, the proposal is in accordance with H4, TR1, C28 and C30 of the adopted Cherwell Local Plan.

CONTACT OFFICER: Caroline Roche TELEPHONE NO: 01295 221816

11/01304/F

Agenda Item 7



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Cherwell DISTRICT COUNCIL NORTH OXFORDSHIRE

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Cherwell DISTRICT COUNCIL NORTH OXFORDSHIRE

Application No: 11/01304/F	Ward: Bicester Town	Date Valid: 22/08/2011
Applicant:	Mr & Mrs R Wilson	
Site Address:	50 Market Square, Bicester, OX26 6AJ	

Proposal: Change of use to Class A2 (financial and professional services)

1. Site Description and Proposal

1.1 The application seeks consent to change the use of 50 Market Square from Class B1 (business) to Class A2 (financial and professional services). This unit was previously occupied by Bicester Advertiser although it now lies vacant. The site is in Bicester town centre, on the island site in the Market Square. The building is Grade II listed and all immediate neighbouring buildings are also Grade II listed. The site is within the Bicester Conservation Area.

1.2 The proposed development would consist of a change of use only with no internal or external alterations.

2. Application Publicity

2.1 The application has been advertised by was of site notice and press notice. The final date for comment was 06 October 2011.

2.2 No letters were received.

3. Consultations

3.1 Bicester Town Council has **no objection** to the application and welcomes this change of use.

3.2 Oxfordshire County Council has **no objection** to the application.

3.3 Cherwell District Council`s Design and Conservation Officer has **no objection** to the change of use.

4. Relevant Planning Policies

4.1 Planning Policy Statement 1: Delivering Sustainable Development
Planning Policy Statement 4: Planning for Sustainable Economic Development
Planning Policy Statement 5: Planning for the Historic Environment
Planning Policy Guidance 13: Transport
South East Plan 2009 – Policies T1, RE1, BE1 and BE6
Adopted Cherwell Local Plan – Saved Policies S13, C21 and C28

5. Appraisal

5.1 The key issues to consider are the principle of the change of use, the impact upon the listed buildings and Conservation Area, and the impact upon highway safety.

Principle

5.2 The acceptability of the principle of the change of use of this town centre unit should be determined in accordance with Government guidance contained within PPS 4, Policy RE1 of the South East Plan 2009 and saved Policy S13 of the adopted Cherwell Local Plan.

5.3 Policy RE1 of the South East Plan 2009 requires Local Planning Authorities to enable flexibility via their local development documents to respond positively to changes in the global economy and the changing economic needs of the region.

5.4 Government guidance contained within PPS 4 seeks an overarching objective of sustainable economic growth. Policy EC 10.1 states that *"Local planning authorities should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably."* All planning applications should be assessed against the impact upon climate change, accessibility by a choice of means of transport, whether it secures high quality design, the impact upon economic and physical regeneration of the area and local employment.

5.5 The unit lies within the Primary Shopping Frontage of the town centre as designated in the adopted Cherwell Local Plan and saved Policy S13 that states, *"…changes of use at ground-floor level to non-retail uses will not normally be permitted."* A 'non-retail use' means a use not included in Class A1 or A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The Policy is intended to apply to the whole of the ground floor of any premises, any part of which is in or abuts the defined area.

5.6 The proposed development would involve the change of use of the ground-floor of 50 Market Square from one non-retail use to another, in this case to Class A2, and would theoretically be contrary to saved Policy S13 of the adopted Cherwell Local Plan.

5.7 The supporting text to Policy S13 states that *"The Council's concern is that in primary shopping frontages there should not be a reduction in the overall length of shop frontage. Policy S13 is not intended to prevent the relocation of existing non-retail uses within the primary frontages where no net loss of shopping frontage would result."*

5.8 Whilst the proposed use would not involve the relocation of an existing use within the primary frontage, it would replace an existing non-retail use. The development would not, therefore, result in a loss of existing shopping frontage.

5.9 The proposed development would involve the re-use of an existing unit in a sustainable town centre location that is easily accessed by a variety of modes of transport. The existing unit is not Class A1 or A3 and the development would not result in the loss of primary shopping frontage.

5.10 With the positive and flexible approach to development encouraged by Policy RE1 of the South East Plan and Government guidance contained within PPS 4 borne in mind, the HOS for DC&MD considers that the development would represent sustainable economic development in this town centre location, and that the change of use should be permitted, as even though it would not strictly accord with saved Policy S13 of the adopted Cherwell Local Plan, it would not conflict with the overall objective of the Policy that seeks to retain the existing shopping frontage.

Listed Buildings and Conservation Area

5.11 The proposed development would involve only the change of use of this vacant listed building with no internal or external alterations. Saved Policy C21 of the adopted Cherwell Local Plan states that sympathetic consideration will be given to proposals for the re-use of an unused listed building, provided the use is compatible with its character, architectural integrity and setting. The HOS for DC&MD considers that the development would not cause harm to the historic character or appearance of the listed building, the setting of the adjacent listed buildings or the significance of the Conservation Area. The proposal accords with Government guidance contained within PPS 5, Policy BE6 of the South East Plan 2009 and saved Policy C21 of the adopted Cherwell Local Plan.

Highway Safety

5.12 Oxfordshire County Council Highway Authority have assessed the proposal and do not consider that harm would be caused to the safety or convenience of highway users. Due to the town centre location of the site the HOS for DC&MD sees no reason to disagree with this assessment. The proposal accords with Government guidance contained within PPG 13 and Policy T1 of the South East Plan 2009.

6. Recommendation

The application is **approved**, with no conditions.

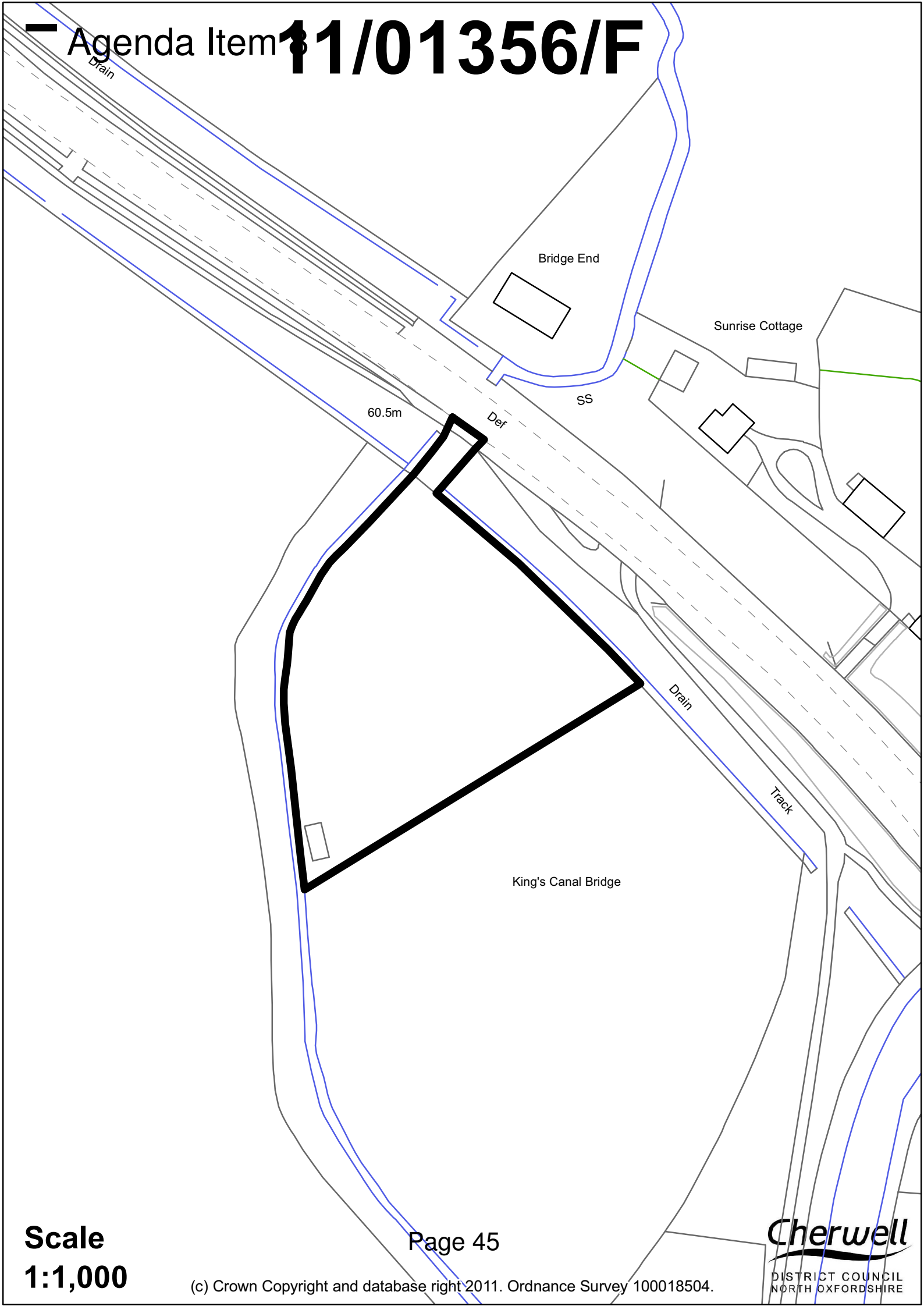
SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES

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 change of use would meet the overall objectives of saved Policy S13 of the adopted Cherwell Local Plan whilst not strictly according with the wording of the Policy itself. Further, the proposed use would be appropriate in its context and would not cause detriment to highway safety, the listed building, the setting of nearby listed buildings or the significance of the Conservation Area. As such the proposal is in accordance with Government guidance contained within PPS 1, PPS 4, PPS 5 and PPG 13, Policies T1, RE1, BE1 and BE6 of the South East Plan 2009 and saved Policies S13, C21 and C28 of the adopted Cherwell Local Plan 1996, and for the reasons given above 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: Gemma Magnuson TELEPHONE NO: 01295 221827

Agenda Item 8

11/01356/F



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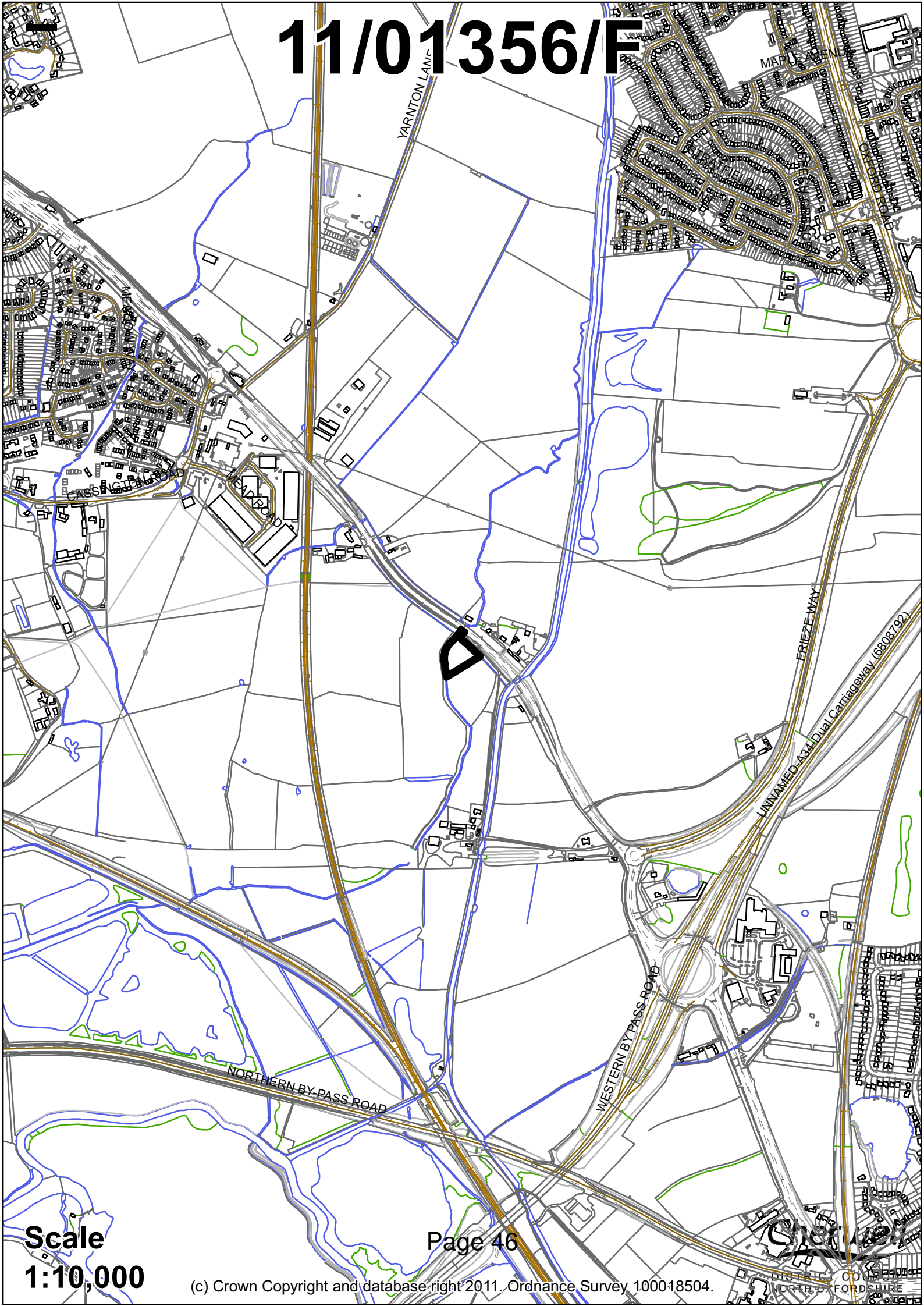
Cherwell DISTRICT COUNCIL NORTH OXFORDSHIRE

11/01356/F



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Application No:11/01356/F	Ward: Yarnton, Gosford and Water Eaton	Date Valid: 01.09.11
Applicant:	Mrs Lily Price	
Site Address:	Land South West Of The Mead Woodstock Road Yarnton	

Proposal: Change of use of land for use as a gypsy and traveller site involving the provision of 3 no. household pitches with no more than 3 no. static caravans, 2 no. amenity buildings and associated hardstanding and parking areas (part retrospective)

1. Site Description and Proposal

1.1 The site comprises approximately 0.42 ha of mostly agricultural land within the Oxford Green Belt to the south west of Woodstock Road (A44), less than 1km to the south of Yarnton and less than 2km from Oxford to the south and from Kidlington to the north-east. Located on the southern most edge of the district, the site is adjacent to Kings Canal Bridge (locally listed) with several residential properties (including the Gables a locally listed building) and business premises located on the opposite site of the A44. Access to the site is via an existing track which enters the northern corner of the site off a lay-by along the A44.

1.2 Planning permission is sought for the above proposed development. The site is occupied by the applicant and her family members and currently there are 4 no. touring caravans sited on the land which has been partially surfaced with hardcore.

1.3 In support of the application the following factors have been submitted by the applicant as very special circumstances:

- There is an unmet need for gypsy and traveller sites in the district
- There is no adopted development plan policy which makes provision for meeting the accommodation needs of gypsies and travellers to comply with Circular 01/2006
- There are no formally identified or are likely to be identified sites imminently in the district for DPD purposes to comply with Circular 01/2006
- There are health and educational needs of the families which would benefit from a settled base

2. Application Publicity

2.1 The application has been advertised by way of a site notices. The final date for comments was 20 October 2011

2.2 3 no. letters of objection have been received on the grounds that

- The land on which this application has been made is classified as Green Belt and is paddock/grazing land and should not be for a caravan/travellers site.
- The land has seen deer grazing and there are newts in the stream which would probably die off, any waste should not discharge into the stream and if allowed the use of this land could cause an environmental problems which have not been addressed.
- There is constant noise coming from the site by generator on all the time and dogs barking
- Hopefully this council will not create an Oxfordshire version of Dale Farm in Essex and therefore should be stopped now

Oxford Green Belt Network object to the application and make the following comments:

The site in question is within that part of the Oxford Green Belt commonly known as "the Kidlington Gap". This narrow gap of just a few fields separates the built-up area of Oxford from the settlements of Yarnton and Kidlington. It is one of the fundamental purposes of Green Belt policy, as set out in PPG.2, to prevent nearby settlements from merging. Allowing the development proposed in the above application would create a "stepping stone" of residential development between Oxford and Yarnton, and thereby contribute to the erosion of this important gap. Development at this site would also constitute encroachment into the countryside, contrary to Green Belt policy at both national and District level. Circular 01/2006 recognizes that developments such as this one will normally count as inappropriate development in the Green Belt, and it is our view that that this application does amount to inappropriate development since it would clearly be harmful to the openness of the Green Belt.

Also concerned to note that the applicant appears to have already taken up residence at the site in question.

3. Consultations

3.1 Gosford and Water Eaton Parish Council – Objects to the application on the grounds that the proposal is inappropriate development and the land is believed to be within flood risk zone area also the access onto the A44 could cause traffic accidents on this busy trafficked road and could cause potential conflicts with access opposite.

3.2 Yarnton Parish Council – Objects to the application on the grounds that the development is inappropriate development and causing harm to the Green Belt and character of the landscape contrary to PPG2 and Policy GB1 of the adopted Cherwell Local Plan.

3.3 Oxfordshire County Council (Highways) – No objection subject to conditions. Whilst the access will require upgrading the development accords with Circular 01/2006 in terms of adequate visibility and parking and manoeuvring within the site.

3.4 Oxfordshire & Buckinghamshire Gypsy & Traveller Services – The family are not known to the service and they are not on any Council waiting list for any availability.

3.5 Oxfordshire County Council (Drainage) - All roof water and surface water from hardstandings should drain to soakaways, be SUDs compliant and not enter onto the highway drainage system.

3.6 British Waterways – Raises no objection subject to the site being adequately screened by landscaping to protect views from the canal towpath.

3.7 Environment Agency – Objects to the application and recommends refusal on the grounds that one of the caravans is to be sited too close to the Kingsbridge Brook main river and would as a consequence:

- restrict maintenance and emergency access to the watercourse
- has the potential to cause unacceptable obstruction to flood flows in cases of extreme events
- affect the stability of the riverbank and its function and increase the risk of flooding in the locality
- put the occupants of the caravan at risk in cases of extreme events

This objection could be removed subject to the revised layout of the site so that all structures are at least 8m from the top of the river bank.

3.8 Thames Water – Raises no objection

3.9 Ecologist – the land looks to be rough grassland and it is noted that no ecological information has been submitted; usually a phase 1 survey should be produced of undeveloped land to assess impacts on protected or notable species.

There are records of water voles throughout the area along the canal and it is probable that they also utilise the ditches and particularly the brook running along the West of the site. In the current absence of any information on their presence no works, storage of goods, mowing or disturbance to banks should occur within 10m of ditches or water features on site and no discharge of water should affect any ditches or water courses without an assessment.

The hedges and trees surrounding the site are to remain untouched although, this should be confirmed as the vegetation strip to the West in particular forms part of a long vegetated corridor which is likely to be important for wildlife movement in the area. If this is the case then this should not pose a problem however if any woody vegetation is to be removed or cut on site this should not be carried out during the bird breeding season and mature trees affected need to be checked for bat roosts and barn owl nests given the records in the area.

If any sections of hedgerow are proposed for removal these need to be replaced on site as they are likely to qualify as BAP habitat. A 3-5m buffer should be maintained along all hedgerows where mowing and building does not take place.

There may be potential for reptiles to be using the grassland on site - this will largely depend on its previous usage but the applicants should be aware that reptiles are protected by law against killing and injury and a method statement would be needed to ensure their protection during any building work.

At the proposed scale the development would be unlikely to impact the nearby Local Wildlife Site to the North West.

The site falls within a CTA which is an area of opportunity for biodiversity enhancement. Developments in these areas, in particular on currently undeveloped land should, under PPS9, demonstrate no net loss to biodiversity and ideally include some features which fit in with the aims of this CTA.

3.10 Head of Planning Policy and Economic Development – there is no doubt that this proposal would cause harm by way of inappropriateness, effect on the openness of the Green Belt and by way of encroachment. There is unmet housing need in Cherwell and subject to confirming that there is no alternative accommodation that is suitable, available, affordable and acceptable, the households concerned would appear to be in housing need. However, an examination of the degree of harm to the Green Belt and any other material considerations would need to be included in any assessment of whether there are very special circumstances that would justify a permanent or temporary permission.

A full assessment of the unmet housing need and comments made in this respect from HOS of PP&ED is detailed in the context of the appraisal.

4. Relevant Planning Policies

4.1 National Policy Guidance:

PPS1: Delivering Sustainable Development and Climate Change Supplement

PPG2: Greenbelts

PPS3: Housing

PPS5: Planning for the Historic Environment

PPS7: Sustainable development in rural areas

PPS9: Biodiversity and Geological Conservation

PPG13: Transport

PPS25: Development and flood risk

Draft National Planning Policy Framework – July 2011

ODPM Circular 01/2006 – Planning for gypsy and traveller caravan sites (Circular 1/06)

ODPM Circular C18/94 – Guidance on managing unauthorised camping

Government's Draft guidance 'Planning for Traveller Sites'

Government's publication 'Designing Gypsy and Traveller sited – good practice guide' May 2008

Human Rights Act 1998

The Equality Act 2010

4.2 Regional Policy in the South East Plan 2009:
CO4: Green Belt
CC7: Infrastructure and implementation
H4 : Type and size of new housing
NRM2: Water quality
NRM4: Sustainable flood risk management
NRM5: Conservation and improvement of biodiversity
SP5: Green Belts
T4: Parking
Paras 7.27 – 7.30 – provision for gypsies and travellers : interim statement

4.3 Local Policy in the Adopted Cherwell Local Plan 1996:
GB1: Green Belt
C1: Nature conservation
C4: Ecology – habitat creation
C5: Ecology – protection along the Oxford canal and river Cherwell
C7: Landscape conservation
C8: Sporadic development
C14: Trees and landscaping
C28: Layout, design and external appearance to be compatible with the character of the context of a development proposal
ENV7: Water quality
ENV12: Contaminated land

4.4 Draft Core Strategy
SD12: Green Belt
H8: Travelling communities

5. Appraisal

5.1 The main issues for consideration in this application are;
- policy context
- layout and amenity
- access, parking and highway safety
- ecology

5.2 Policy Context

This application must be determined in line with the development plan unless other material considerations indicate otherwise; the main policy considerations for an application of this sort are set out in Section 4 above. Also material to the consideration of this application is the recent appeal decision at Islip (10/00839/F / APP/C3105/A/11/2144721) which has allowed the permanent permission for 8 no. household pitches for gypsy and traveller use, 6 no. pitches for the appellant and his extended family and a further 2 no. pitches for use by other family and friends on

a Green Belt site.

5.3 PPS3: Housing

The Government guidance contained in PPS3 sets out policies designed to achieve affordability and supply of housing in all communities, including rural areas. Paragraph 21 echoes the advice in Circular 01/2006 to ensure that Local Planning Authorities should have regard to 'the diverse range of requirements across the area, including the need to accommodate Gypsies and Travellers'.

5.4 *Accessibility*

Circular 01/2006 on Planning for Gypsy and Traveller Caravan Sites states that issues of sustainability are important but that authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services.

5.5 The nearest services and facilities are likely to be those at Yarnton and Kidlington which are relatively nearby (within 2 km). Although the draft Core Strategy 2010 carries little weight, this distance is within that envisaged to be acceptable by policy H8 which seeks to establish criteria for assessing the locational suitability of sites. It is understood that Yarnton has a Primary School, playgroup, medical practice, shops, post office, community and recreational facilities, some places of employment and a regular bus service to Oxford (S3). The HOS for DC&MD agrees with the HOS for PP&ED in that the site is in an acceptable location for a gypsy and traveller site in terms of access to services and facilities.

5.6 *Green Belt*

Circular 01/2006 clarifies that new gypsy and traveller sites in the Green Belt are normally inappropriate development, as defined in PPG2: *Green Belts*. PPG2 advises that inappropriate development is, by definition, harmful to the Green Belt and substantial weight will be attached to that harm. It states such development should not be approved, except in very special circumstances and that such circumstances will not exist unless the harm caused by reason of inappropriateness and any other harm is clearly outweighed by other considerations. The very special circumstances forwarded by the applicant have been identified in para 1.3 above. The Government's draft PPS on Planning for Traveller Sites is far bolder than Circular 01/2006 in its protection of the Green Belt. Policy E20 contains a notable shift of emphasis. It states: "there is a general presumption against inappropriate development within Green Belts. Traveller sites in the Green Belt are inappropriate development, within the meaning of PPG2". Little weight should be attached to this document at its current stage although it indicates the Government's direction of travel on this issue.

5.7 PPG2 advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the most important attribute of Green Belts is their openness. One of the purposes of including land in Green Belts is to assist in safeguarding the countryside from encroachment.

5.8 Having regard to the recent appeal decision which allowed 8 pitches for Gypsy

households within the Green Belt near Islip, the HOS for DC&MD has no doubt that this proposal would cause harm by way of inappropriateness, detrimentally affect the openness of the Green Belt and cause harm to the Green Belt by way of encroachment, notwithstanding it's smaller scale. The proposal would, therefore, be in conflict with South East Plan 2009 policy CO4 and adopted Cherwell Local Plan policy GB1.

5.9 The development consisting of extensive hardstandings, access track, 3 pitches with 6 caravans, fencing, amenity blocks, vehicles and domestic paraphernalia, would cause significant harm to the openness of the Green Belt. Contrast this with the land prior to the applicant's occupation, an open field.

5.10 There is further harm to one of the purposes of including land in Green Belts in PPG2: to assist in safeguarding the countryside from encroachment. The site lies in the open countryside outside the boundary of any settlement. The amount of urbanising development in a green field location would again be significant.

5.11 There would also be visual harm to the character of the landscape by the introduction of obtrusive and incongruous development. Views across the site from the canal towpath would be possible and whilst the site is concealed from the A44 behind a substantial hedge, during winter months the development would be more obvious. The applicant has however advised that additional forms of landscape planting would be provided, specifically along the southern boundary, which would mitigate the harm caused to the visual amenity of the landscape, thereby reducing the degree of visual intrusion.

5.12 In respect to this matter in the Islip appeal case, Secretary of State agreed with the Inspector that the proposal would constitute inappropriate development in the Green Belt and also the Inspector's analysis and weightings (detailed in paras 5.27 and 5.28 of this report) and with her conclusion that the significant harm to the openness of the Green Belt and the moderate harm caused by conflict with one of the purposes of including land in the Green Belt add to the substantial harm by reason of inappropriateness. The Secretary of State further agreed that, given these findings, the proposal would be in conflict with the South East Plan 2009 Policy CO4 and LP policy GB1.

5.13 *The need for further sites for gypsies and travellers*

One of the aims of Circular 1/06 is to increase significantly the number of gypsy sites with planning permission over a period of 3-5 years from the date of the circular i.e. by 2011. PPS3 requires the accommodation needs of Gypsies and Travellers to be considered in planning for housing. The advice in PPS3 relating to the provision of a 5 year supply of housing land also applies Gypsies and Travellers. The draft PPS on Planning for Traveller Sites (a material consideration albeit one to which limited weight should be given at this stage) proposes that LPAs should identify specific sites that will enable continuous delivery of sites for at least 15 years (from adoption of the plan) and should identify sufficient specific deliverable sites to deliver site need in the first five years . The Inspector for the Islip inquiry stated "*It is clear that the Council cannot demonstrate a 5 year supply of deliverable sites for gypsies and travellers and that they will not be able to meet the*

aim of the Circular" (para' 143).

5.14 On 1/4/06 it was understood that Cherwell had 48 household pitches. Since then there has been a loss of an estimated 10 pitches for Gypsies and Travellers at the Bicester Trailer Park site, a gain of 4 pitches at Mollington, 8 new pitches by the A34 near Islip, and an additional pitch with personal permission at Ardley. On this basis, there has been a net gain of 3 pitches. However, a longstanding temporary permission for the Smiths site at Milton Road, Bloxham (20 pitches) has expired and a new application is expected. If the permission were not to be renewed, there would be an overall net loss of 17 pitches since 2006.

5.15 A Gypsy and Traveller Accommodation Needs Assessment (GTAA) was produced in 2006 for all authorities in the Thames Valley area. Cherwell's need (corrected) was identified as being 12 additional permanent pitches (2006-2011). The net gain in pitches since 2006 (leaving the Smiths renewal issue aside) reduces this to 9 pitches (2006-2011).

5.16 Circular 01/2006 had intended that the GTAAs would also inform Regional Spatial Strategies which would identify pitch numbers for each individual LPA in the light of GTAAs and a strategic view of needs across the region. To assist this process, an Oxfordshire partnership (including this Council) agreed advice for submission to the former Regional Assembly on the number of Gypsy and Traveller pitches required to 2016 and how distribution might be made strategically having regard to the results of the GTAA. The partnership's advice was that the level of need was lower than that suggested by the GTAA and that the need for Cherwell (based on the distribution of existing sites) was for 11 pitches from 2006 to 2016. The net gain of pitches since 2006 lowers this to 8 pitches. An alternative, shared distribution approach (rather than being based on the location of existing sites) was also submitted by the Oxfordshire partnership (but not agreed by Oxford City). This suggested 8 pitches for Cherwell for the same period. The net gain since 2006 lowers this to 5 pitches.

5.17 In February 2010, an Examination in Public (EiP) into regional accommodation provision took place (South East Plan single issue review). The South East England Partnership Board's recommendations to the former Secretary of State included that Cherwell should provide an additional 15 pitches (on top of the 2006 baseline position) for Gypsies and Travellers from 2006 to 2016 (the net gain in pitches since 2006 lowers this to 12 pitches). SEEPB also recommended that where Local Development Plan Documents look beyond 2016, onward requirements could be calculated on the basis of 3% compound growth. These figures were a matter of debate at the Examination.

5.18 However, the Secretary of State for Communities and Local Government has since announced that the Government intends to revoke Regional Strategies and circular 01/2006 and produce new 'light touch' guidance – the proposed PPS. As a consequence, work on the South East Plan single issue review was not completed.

The Government has stated:

"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 (GTAAs) 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."

5.19 At the time of writing, officers are considering how a new local assessment of need might be best undertaken and are taking soundings from consultants. Notwithstanding this , even the lowest of the assessments of need (the Oxfordshire partnership's advice) referred to above produces a remaining requirement of either 8 or 5 pitches by 2016. On this basis, there would still be outstanding need even with the 3 proposed pitches.

5.20 Circular 1/06 advises that alternatives should be explored before Green Belt locations are considered. Further clarification from the applicant has been sought in this respect, to establish that there is no alternative accommodation for the families that is suitable, available, affordable and acceptable. In para 79 of the Islip case the Inspector advises "Case law has established that there is no onus on an appellant to prove that no other sites were available (*South Cambridgeshire District Council v Secretary of State for Communities and Local Government and Brown* [2008] EWCA Civ 1010) but in light of the advice in paragraph 49 of Circular 01/2006 the Council considers that the lack of evidence of a search for alternative sites before a proposal for a Green Belt site came forward should be weighed against the appellant. However it should be noted that there are no available alternative gypsy and traveller sites in the District that officers are aware of.

5.21 In the light of the evidence presented at the Islip inquiry, the HOS for DC&MD would not expect there to be 3 permanent pitches available on any existing site in the district. Although the emerging LDF has been considering Gypsy and Traveller accommodation requirements since 2006, no specific sites have yet been formally identified or are likely to be identified imminently.

5.22 That final point was essentially the most significant issue in the Inspectors summing up of the Islip appeal, in accordance with Circular 01/2006, by February 2011 the Council should have been in a position to identify sites to accommodate gypsy and travellers through the development plan process and produce a separate site allocation DPD, but it had not and therefore, failed to comply with the provisions of that circular.

5.23 Also material to the case, was the fact that despite only 3 no. of the 8 no. pitches actually demonstrating health needs as very special circumstances in the Green Belt, the Inspector found that given the unmet need for gypsy and traveller sites in the district, the lack of alternative provision and the failure of the development plan to meet the identified need, these factors were considered very special circumstances weighing in favour of the proposed development and to justify allowing inappropriate development in the Green Belt.

5.24 *The families' personal circumstances*

The site accommodates Lilly Price, together with her two sons, Ivor and Douglas. Ivor and Julie Price have 4 children aged 8, 5, 4 and 1. Douglas and Bitty Price have 7 children aged 17, 14, 12, 10, 9, 7 and 5. The applicant and her family are gypsies as defined in paragraph 15 of Circular 1/06. The case officer has been advised that the children attend Yarnton school. Access to a settled base on the application site is clearly beneficial to the childrens' education.

5.25 In respect to the accommodation, the adults would live in the larger static caravans with the younger children and the older children would sleep in the separate touring caravans whilst they were in occupation at the site.

5.26 Bitty Price and one of her children have health issues which need treatment and monitoring and would benefit from a settled site with access to specialist heath care. The children would also be able to attend school on a regular basis. Both Circular 1/06 and the 'Planning for Traveller Sites' consultation document acknowledge the sustainability benefits of access to health and education.

5.27 It is understood that the family have come from Evesham, further details of why they have left that area and why they have chosen Yarnton to settle are awaited.

5.28 *Article 8 and 14 of the European Convention on Human Rights and the Equality Act 2010*

Under Article 8 there is a positive obligation to facilitate the gypsy way of life. The Article 8 rights of the applicant and the other site occupiers are clearly engaged. They occupy the site as their home and are likely to face eviction if the application is refused which could lead to a roadside existence and make access to education and health care more difficult. Consideration of the proportionality of this event must be taken into account when considering the harm to the Green Belt caused by the development.

5.29 The Equality Act 2010 places a general equality duty on decision makers in respect of planning permission. The applicant and her family are Irish Travellers *[is this correct?]*. Gypsies and Travellers are believed to experience the worst health and education status of any disadvantaged group in England. The Council has a duty to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people of different racial groups. Article 14 requires that Convention rights shall be secured without discrimination on any ground including race.

5.30 *The balancing exercise*

Taking the above into account, it is therefore necessary to consider whether the harm to the Green Belt is clearly outweighed by other considerations. In the Islip appeal the Inspector found that the following assessment (paras 164, 165 and 168) weighed in favour of the appellant and therefore allowed the appeal:

"Against the proposal:

- Harm by reason of inappropriateness, which carries substantial weight;
- Harm to openness, which carries significant weight;
- Harm to one of the Green Belt purposes, which carries moderate weight;
- Harm to the character and appearance of the area, which carries moderate weight.

In favour of the proposal:

- The general need for sites which carries significant weight;
- The personal need for sites which carries significant weight for the proposed occupiers of 4 pitches (those without permanent sites);
- The family support and facilitating the gypsy way of life for all proposed residents, including the need for the appellant and parent to live with the rest of the family, which carries moderate weight;
- The lack of suitable, available alternative sites to meet the need, which carries significant weight;
- The failure of the development plan to meet the identified need, which carried significant weight;
- The education benefits for the families, which carries moderate weight;
- The health benefits for 1 family member carries moderate weight and little weight for the other family members without permanent pitches;
- The freeing up of 2 pitches elsewhere in the country carries moderate weight in favour of 2 pitches".

5.31 Taking into account the rights of the appellant and his family under Article 8 of the ECHR and the Equality Act 2010 the Inspector concluded that "in the circumstances set out above, the harm by reason of inappropriateness and the additional harm identified, which would be caused by the proposed 6 pitches, is clearly outweighed by the totality of the other considerations. In considering the case for 6 pitches as a whole, I conclude that very special circumstances do exist so as to justify this inappropriate development in the Green Belt."

5.32 The Inspector then went on to consider in paras 169-171 "the additional 2 pitches, for which there are no named occupiers, on the basis that a justification exists for 6 pitches on the site. The additional 2 pitches would only cause limited harm to openness and purposes and to the character and appearance of the area". Against the proposal were the same 4 factors above, but weighing in favour of the proposal the Inspector found that:

- The general need for sites
- The lack of suitable, available alternative sites to meet the need
- The failure of the development plan to meet the identified need

All carried substantial weight.

5.33 This application is very similar to the Islip appeal case, albeit on a smaller scale and therefore the same balancing exercise would usefully demonstrate the case before Members now.

Against the proposal:

- Harm by reason of inappropriateness, which carries substantial weight;
- Harm to openness, which carries significant weight;
- Harm to one of the Green Belt purposes, which carries moderate weight;
- Harm to the character and appearance of the area, which carries moderate weight.

In favour of the proposal:

- The general need for sites which carries significant weight;
- The personal need for sites which carries significant weight for the proposed 3 pitches.
- The family support and facilitating the gypsy way of life for all proposed residents, which carries moderate weight;
- The lack of suitable, available alternative sites to meet the need, which carries significant weight;
- The failure of the development plan to meet the identified need, which carries significant weight;
- The education benefits for the families, which carries moderate weight;
- The health benefits for 2 family members carries moderate weight and little weight for the other family members.
- A refusal of the application could lead to enforcement action which has the potential to render the family homeless. This would be highly unsatisfactory for the family's education and health needs and contrary to national policy aimed at meeting the needs of gypsies and travellers.

Taking the above into consideration the HOS for DC&MD is of the opinion that essentially the harm to the Green Belt by reason of inappropriateness and the additional harm identified by the proposed development is outweighed by the factors submitted by the applicant and in light of the Islip appeal decision, very

special circumstances do exist so as to justify this inappropriate development in the Green Belt.

5.34 If Members are minded to disagree with the HOS for DC&MDs opinion and consider refusing the application instead on Green Belt harm grounds, then the advice in Circular 01/2006 should be taken into account. Paras 41- 46 sets out how Local Planning Authorities should consider transitional arrangements and essentially the HOS for DC&MDs advises Members that they should consider a temporary consent where there is a clear unmet need and in the absence of a site allocation DPD. Details provided in paras 5.13 - 5.23 of this application report refer to the unmet need for gypsy and traveller sites. Members should also be aware of:

- details of incidents of unauthorised encampments
- numbers and outcomes of planning applications and appeals
- levels of occupancy, plot turn over and waiting lists for public authorised sites
- the status of existing authorised sites
- twice yearly caravan count undertaken on behalf of ODPM

The HOS for DC&MD can confirm that details of the levels of occupancy, status of existing authorised sites and caravan count all conclude that there is no immediate availability of pitches in the district. Other than this application site there are no other incidents of unacceptable unauthorised encampments that are outstanding. The site at Mollington was occupied without consent but this site is now authorised. In recent years other than the latest application at Mollington, most sites were allowed on appeal.

5.35 Paragraph 45 of the Circular 01/2006 advises that “a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Where there is unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting a temporary permission”

5.36 Paragraph 46 goes on to say that “such circumstances may arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified. The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. In some cases, it may not be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay”.

In considering whether a temporary planning permission would be justified, Members should give substantial weight to the unmet need for gypsy and traveller

sites in the District.

5.37 Layout and amenity

The application site forms the north-western section of a much larger field within the applicant's ownership, but the remaining land is either within a Flood Zone 2 or 3. Therefore the layout of the site is mainly contained to this north-western section; however, one of the pitches is to be sited within 8m of the Kingsbridge Brook main river. Consequently the Environment Agency has raised an objection, but this could be overcome by the repositioning of this pitch. At the time of writing no amended plan has been received, but the case officer has been informed by the applicant's agent that an amended layout will be submitted prior to the Planning Committee Meeting.

5.38 The proposed layout demonstrates that 3 no. static caravans, 2 no. amenity blocks, and positioning for an additional 3 no. touring caravans and vehicles can be accommodated on the site. A waste package plant will be installed on the site, details of which are awaited and will be subject to the Environment Agency's approval. The existing hedge along the A44 north eastern boundary is to be retained with the potential to provide more planting along with the southern boundary edge. All other trees along the north western boundary are to be retained. Small grassed areas are to be retained to the rear of the caravans. The layout generally accords with the guidance contained in the Government's publication 'Designing Gypsy and Traveller sited – good practice guide'.

5.39 The HOS for DC&MD considers that subject to the submission of an acceptable layout plan and the removal of the objection from the Environment Agency the proposed layout is acceptable and accords with Policies C28 and C30 of the adopted Cherwell Local Plan.

5.40 In terms of amenity for neighbouring properties, the comments made by the local residents are duly noted, however the HOS for DC&MD considers that there is no impact on privacy from any direct overlooking and the generator noise could be mitigated by an acoustic enclosure, if the site is not to be connected to the main electricity grid. There is however no planning control over dogs barking, this is a matter for the Anti Social Behaviour Manager under Environmental Law. The proposal therefore accords with Policy C30 of the adopted Cherwell Local Plan.

5.41 Access, parking and highway safety

PPG13 and Policy TR4 of the South East Plan 2009 seeks to ensure standards of road safety and parking provision are maintained. The site is accessed off the A44 Woodstock Road and utilises an existing access entrance and track off a lay-by. Notwithstanding the concerns of the Parish Councils the acceptability of the access and parking provision has been confirmed by the local highway authority, which raise no objection subject to the access being upgraded, demonstrating appropriate width, geometry and surfacing. This could be subject to a condition should an amended plan not be agreed by the Highway Engineer. The proposal therefore accords with PPG13 and Policy T4 of the South East Plan 2009.

5.42 Ecology

Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, "local planning authorities should consult Natural England before granting planning permission" and paragraph 99 goes onto advise that "it is essential that the presence or otherwise of protected species, and the extent 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."

5.43 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".

5.44 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.

5.45 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:

1) is the development needed for **public heath or public safety** or **other imperative reasons of overriding public interest including those of a social or economic nature** (development).

2) Is there any **satisfactory alternative**?

3) Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?

5.46 Therefore where planning permission is required and protected species are likely to be found to be present at the site or surrounding area, Regulation 9(5) of Conservation Regulations 2010 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 (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council's Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.

5.47 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:

1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission

2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission

3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)

[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]
[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case)

NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.

5.48 In respect to the application site, a Phase I Ecology survey has been requested and is to be undertaken. Should EPS or other species be identified, sufficient mitigation measures should also be established to ensure that there is no impact upon their existence on the site.

5.49 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 Policy C2 of the adopted Cherwell Local Plan.

5.50 Developer contributions

The draft Supplementary Planning Document (SPD) relating to the requirement for financial contributions towards infrastructure or service requirements was considered by the Council's Executive Committee on 23 May 2011 and was approved as interim guidance for development control purposes. Further consultation will take place when the revised version of the Core Strategy is published later this year.

5.51 New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect

on local amenity and the quality of the environment. National planning policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost, of all or part of the additional infrastructure/service provision that would not have been necessary but for their development. Planning Obligations are the mechanism used to secure these measures. Consequently all applications registered on or after 15 August 2011 are affected by this draft SPD.

5.52 It is considered that the development will give rise to infrastructure or service requirements and therefore is liable for planning obligations. The following financial contributions towards general infrastructure related items, facilities or measures which will mitigate the effect of the development have been sought:

a) Open space and outdoor sport and recreation - £19,361.31
b) Indoor sports - £3,206.40
c) Community facilities - £833.97
d) Refuse bins and recycling banks - £202.50
e) General Transport and Access impacts - £4,098.00
f) Education - £39,156.00
g) Children's Centres and nursery provision - £585.00
h) Youth services - £303.00
i) Libraries - £975.00
j) Adult learning - £117.00
k) Museum resource centre - £60.00
l) Strategic Waste Management - £747.00
m) Health services - £1,995.00

The total contribution sought from your proposal is £71,640.18.

5.53 At the time of writing no legal agreement has been submitted for consideration, however the case officer has been informed that one is to be submitted and entered into. Further negotiation is taking place in respect to the amounts being sought.

5.54 Heritage Assets

Whilst the site is close to locally listed buildings, the HOS for DC&MD does not consider that the proposal will cause harm to the significance of heritage assets in accordance with PPS5: Planning for the Historic Environment.

5.55 Conclusions

Taking the above considerations into account as well as the development plan and national policy and government guidance, the HOS for DC&MD considers that the harm to the Green Belt by reason of inappropriateness and the additional harm identified by the proposed development is outweighed by the factors submitted by the applicant and in light of the Islip appeal decision, very special circumstances do exist so as to justify this inappropriate development in the Green Belt.

5.56 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 amenity, visual amenity, ecology and significance of heritage assets nor would it give rise to increase flood risk. The proposal is therefore

acceptable and complies with the relevant development plan policies.

6. Recommendation

Approval, subject to

i) Departure procedure

ii) The submission of an amended drawing revising the layout of the site, the removal of the objection from the Environment Agency

iii) The applicants entering into an appropriate legal agreement with Cherwell District Council to secure financial contributions outlined in paragraph 5.51

iv) The imposition of the following conditions;

1) SC 1_4A (Time limit for implementation)

2) The site shall not be occupied by any persons other than gypsies and travellers as defined in 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 and in accordance with PPG2 and policy GB1 of the adopted Cherwell Local Plan, and to comply with Government advice contained in ODPM Circular 01/2006

3) No commercial activities shall take place on the land; including the storage of materials and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

   Reason - In order to safeguard the amenities of the area and in the interests of highway safety in accordance with Policies GB1 and C28 of the adopted Cherwell Local Plan and PPG2: Green Belts and PPG13: Transport.

4) No more than 6 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 3 shall be static caravans or mobile homes) shall be stationed on the site at any time.

   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 and in accordance with Policies GB1 of the adopted Cherwell Local Plan and PPG2: Green Belts and to comply with Government advice contained in ODPM Circular 01/2006

5) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the documents submitted with the application and the following drawings**: Amended Site layout (to be received)**, site location plan, detail of boundary fencing, proposed amenity building

   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.

6) That within 2 months of the date of the permission a scheme for landscaping the site shall be submitted to and approved in writing by the Local Planning Authority, the scheme shall include

(a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,

(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.

7) 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 C28 of the adopted Cherwell Local Plan.

8) That within 2 months of the date of the permission, samples of the materials to be used in the construction of the external surfaces of the day rooms hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details

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.

9) generator condition

10) Highway conditions

11) Ecology conditions

12) Environment Agency conditions

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

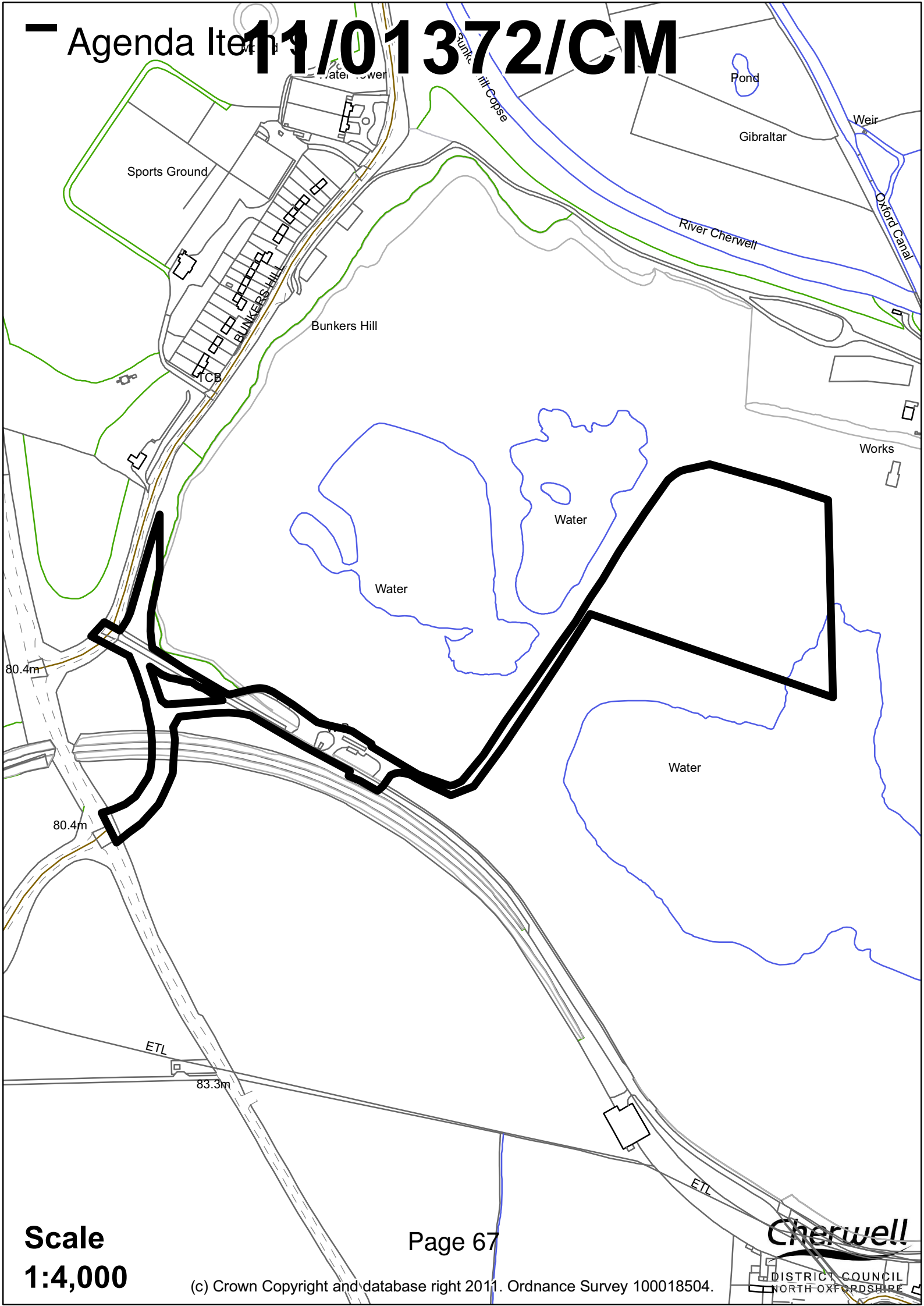
The Council, as local planning authority, has determined this application in accordance with

the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the harm to the Green Belt by reason of inappropriateness and the additional harm identified by the proposed development is outweighed by the factors submitted by the applicant and that very special circumstances do exist so as to justify this inappropriate development in the Green Belt. Furthermore, 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 amenity, visual amenity, ecology and significance of heritage assets nor would it give rise to increase flood risk. As such the proposal is in accordance with government guidance contained in PPS1, PPG2, PPS3, PPS4, PPS5, PPS7, PPS9, PPG13 and PPS25 and Policies CO4, CC7, H4, NRM2, NRM4, NRM5, SP5 and T4 of the South East Plan 2009 and Policies C1, C4, C5, C7, C8, C14, C28, ENV7 and ENV12 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: Tracey Morrissey TELEPHONE NO: 01295 221812

Agenda Item 9

11/01372/CM



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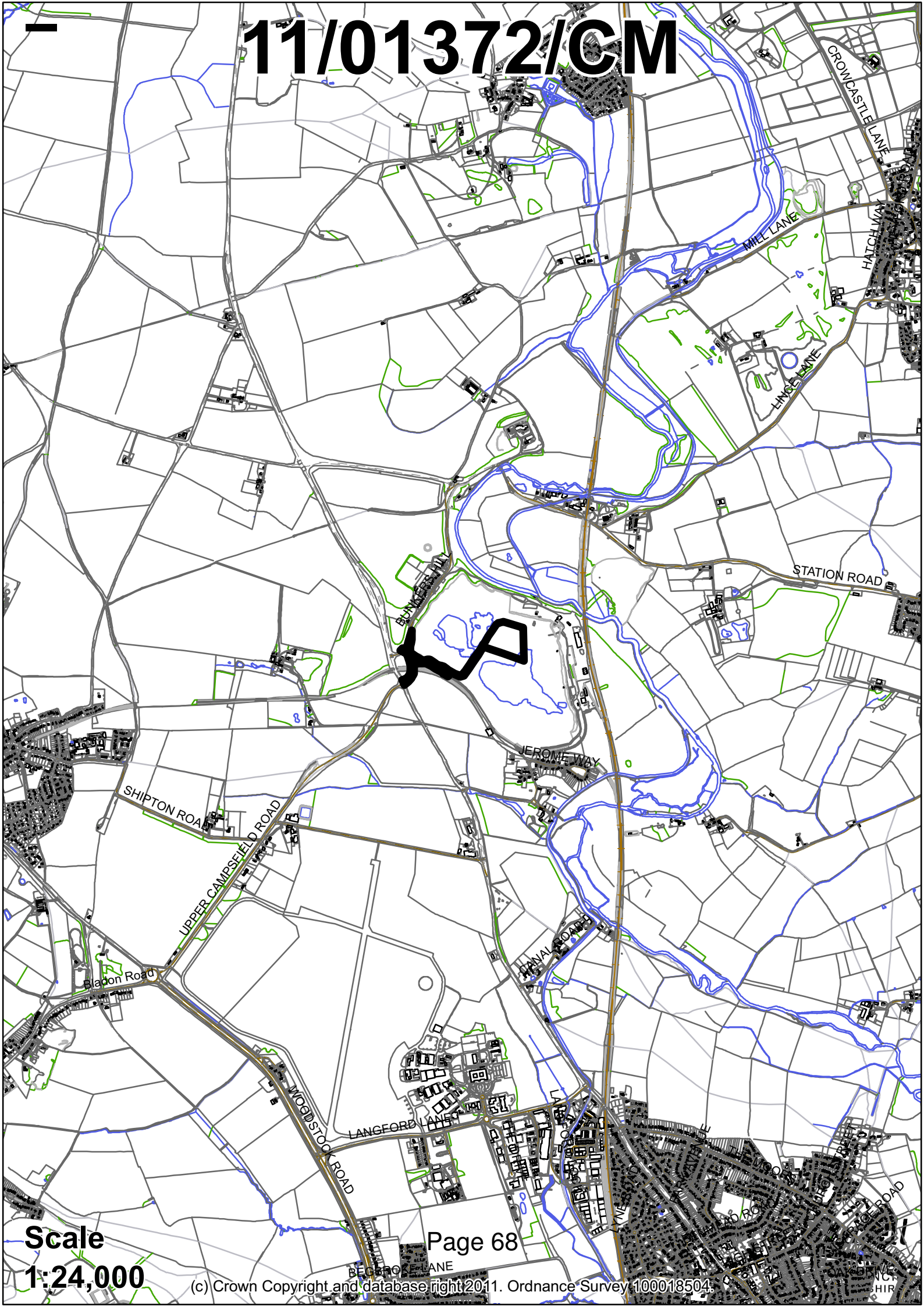
11/01372/CM



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Application No: 11/01372/CM	Ward: Kirtlington	Date Valid: 07 September 2011
Applicant:	Hansteen Land Ltd	
Site Address:	Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire	

Proposal: The importation, storage and processing of inert construction and demolition waste, and operation of an aggregate recycling facility on land at Shipton on Cherwell Quarry. Retention of the existing weighbridge, site office and wheelwash to facilitate the operation of the proposed recycling facility (OCC ref. MW.0119/11)

1. Site Description and Proposal

1.1 Shipton on Cherwell Quarry is a limestone quarry, which extends to approximately 67 hectares. The quarry is located to the north of the village of Shipton on Cherwell and east of the A4260. To the north eastern boundary of the quarry, the land falls away to the Oxford Canal/ River Cherwell, which runs along the edge of the site. Along the eastern boundary is the Birmingham to Oxford Rail line. Bletchingdon lies approximately 2km to the east of the site. To the north west of the site is the linear settlement of Bunkers Hill, separated from the Quarry by the A4095. The quarry has been designated a County Wildlife Site and parts of the quarry are designated as a Site of Special Scientific Interest (SSSI) so has high ecological interest. The site is also within the Oxford Green Belt. A public right of way runs close to the site and the site is potentially contaminated.

1.2 This application seeks the comments of Cherwell District Council on a planning application currently being dealt with by Oxfordshire County Council for the above development. The proposed facility would allow the processing of inert construction and demolition waste for the production of grades of recycled aggregates, recovered topsoil and subsoil for re-use in construction and restoration projects with the residual non suitable inert waste from the recycling operation deposited along with other non suitable imported inert waste within the ongoing permitted quarry restoration works. The proposed recycling facility will be for a temporary period and would be present for the duration of the permitted restoration works. The proposal also seeks retrospective permission for the weighbridge, site office and wheel wash, which currently exist on site and which will be used to facilitate the operation of the proposed recycling facility.

1.3 Planning history

The site has a long history which is set out on the file, however the most relevant applications are:

06/02046/CM (Permitted) Comprehensive restoration and development of quarry.

This development programme incorporated:

- Mineral extraction;
- The import of inert engineering fill to raise the quarry floor above water level;
- The comprehensive restoration of the site, including development of open storage yard areas principally for the storage of cars with an associated inspection building for a period of no more than a 15 year temporary operational period, and a rail storage depot, both supported by a new rail terminal; and
- Two class B8 warehouse buildings and a rail aggregates depot.

Comments were submitted to OCC to this proposal under application numbers 07/00996/CM (Objection) and 07/02011/CM (Objection). The objections were based on the fact that the development is inappropriate development in the Green Belt and that the special circumstances put forward did not outweigh the harm to the purposes and objectives to the Green Belt.

10/00360/CM (No Objection) To continue development without complying with conditions 26 and 36 of 06/02046/CM (these conditions related to site investigation surveys). **(This application repeated all conditions from the earlier application and so supersedes the original consent)**.

11/01402/CM (Pending – elsewhere on the agenda) Continuation of development without complying with condition 6 (importation of waste by road) and with the variance of conditions 1 (time limits) and 7 (volume of waste imported) of planning permission 10/00360/CM, dated 17 June 2010 (OCC ref. MW.0120/11)

2. Application Publicity

2.1 As this matter is a County Matter, all publicity has been undertaken by Oxfordshire County Council.

3. Consultations

3.1 As this matter is a County Matter, all formal consultations have been undertaken by Oxfordshire County Council. However, internal consultations have been undertaken:

3.2 CDC Landscape: Site is well concealed by vegetation from the public viewpoints of roads and footpaths. There are only small glimpses into the site. In addition the development site is at a lower level than surrounding land. For this reason it is not foreseen that there will be any significant landscape impact from the proposed development in terms of buildings and on-site operations.

3.3 CDC Anti Social Behaviour Manager : Following ongoing discussions with OCC and the applicant' agents and further review of the submitted application in particular the

specialist accoustic report, the following comments have been provided directly to the case officer at OCC:

It was agreed between myself and the applicants' consultant that on the period of operation for the crushing and screening equipment would be taken as 100% of any hour on the application of the precautionary principle. Experience suggests that where, at best, estimates of 'on time' periods for plant and equipment are used they can be open to challenge where as the use of a 100% on time period would result in the absolute worst case scenario being modelled. In essence this is the application of the precautionary principle.

The LAeq noise measurement at Bunkers Hill was reported as being 65.9 dB(A). In the annotation that accompanies this measurement it is noted that the dominant noise source at this location was due to road traffic. In this situation any noise produced by the operation of plant and equipment associated with the aggregate processing would not be audible above the road traffic noise. There are however circumstances where the equivalent continuous sound pressure level at this location could be lower and example could be between 07:00 and 08:00 hrs.

It is important in such circumstances to be certain as to the source of the noise being measured and for the condition to be qualified in such a manner that it relates to noise produced by aggregate recycling operations. Mention is made further on in relation to adjustments to the applicants proposed condition.

Comments made by a resident of Shipton on Cherwell previous planning approvals on this site have included an element of Saturday working. As far as I can recall this has not given rise to excessive noise. My view on the measurement positions chosen for the survey is that they are sufficient to provide an indication of the noise climate at the nearest dwellings to the proposed developments site. Equally the periods of measurement are sufficiently long to provide data for the exercise being undertaken. With hindsight coverage of the period 07:00 to 08:00 hrs could have been beneficial as it is likely that this would be the quietest time of the day.

In setting a maximum noise level for aggregate processing operations the noise produced by HGV movements would be included and level measured to test compliance.

Should OCC be minded to approve the application, it is recommend that the hours restriction contained within 10/00360/CM is carried forward in that activities associated with the implementation of this consent shall only take place between 07:00 and 18:00 hrs Mon- Fri, 07:00 and 13:00 hrs on Sat with no working being permitted to take place on Sundays, Bank or Public Holidays.

Although I have previously agreed with the principal of the applicants proposed noise condition (contained within paragraph 9 of their report) with the benefit of a second look I do feel that there are some improvements that can be made. Firstly the two clauses should be seperated to produce two noise conditions.

The first condition should be worded as follows:

That noise from the site genreated by aggregate recycling and within the permitted working hours shall not exceed 55dB(A) when measured as a 1 hour Equivalent Continuous Noise Leve, free field, (Laeq, 1hr) at any of the closest residential properties detailed below:

Residential properties on Jerome Way including 5 and 6 Railway Cottages South of the site and residential properties on Bunkers Hill Rd North West of the site.

The second condition should be worded as follows:

During works associated with site preparation of final restoration a noise limit at any inhabited property of 70 dB(A) Leq,1h (free field) for no greater than a total of 8 weeks in any one year shall apply. The operator shall notify the LPA in writing of the commencement of operations taking place with the benefit of this condition and will specify the duration of proposed period of working.

As a final point I would recommend a further condition requiring the prior approval of dust management plan as historically we have received justified complaint of dust emissions particularly fro the site access road.

3.4 CDC Ecologist - The reptile mitigation proposed will need securing via condition. From the brief description within the main body of the report it seems that reptiles have largely been addressed. With regard to birds I am not sure there is sufficient information on how the proposals will affect them or how they will determine safe timing windows in terms of nesting times for work. The last bird surveys are stated as being 2008/2009 and as there has been a period of un-use on site things may have changed. Will there be a retained ecologist or one on site? Or pre-commencement checks for nests?

The survey data it is based on is out of date however (2009) whilst this is not likely to change the general approach to the mitigation on site as a minimum comment should be made by their ecologist on whether the microhabitat has changed in the intervening time (particularly given that the site hasn't been in use) such that the populations of reptiles may need resurveying prior to any recommencement of works to determine whether the low and high risk areas outlined are still relevant in terms of location.

Many of the issues on site are likely to be being addressed by the OCC ecologist Camilla Burrows.

4. Relevant Planning Policies

4.1 PPS1: Delivering Sustainable Development
PPG2: Green Belts
PPS9: Biodiversity and Geological Conservation

PPS10: Sustainable Waste Management
PPG13: Transport
PPS23: Planning and Pollution Control
PPS24: Planning and Noise
PPS25: Development and Flood Risk

4.2 The South East Plan: Policies BE1, CO4, W6, W17, M2, NRM5, NRM9, NRM10

4.3 Adopted Cherwell Local Plan: Policies GB1, C1, C2, C5, C7, C30, TR7, TR10, ENV1

4.4 Oxfordshire Minerals and Waste Local Plan: Policies W3, W4, PE5, PE14

5. Appraisal

5.1 Whilst this application is related to the other application on the agenda (11/01402/CM), each is to be considered on its own merits. However, it is difficult to consider all the relevant issues without referring to the other application. It might be assumed that the proposed importation of waste by road (rather than rail) is related to the proposed recycling operation, but it has arisen because the applicant has been unsuccessful in securing contracts for the importation of waste by rail.

5.2 Green Belt and Waste Management

Taking this application on its merits, in terms of the principle of the development, the site is situated within the Oxford Green Belt and therefore PPG2: Green Belts is relevant. This National guidance is reflected within regional and local level policy. PPG2 advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts being their openness. One of the purposes of including land in Green Belts is to assist in safeguarding the countryside from encroachment.

5.3 PPG2 advises that there is a presumption against inappropriate development within the Green Belt, which should not be approved, except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Development which is appropriate within the Green Belt is identified within PPG2.

5.4 PPG2 also provides advice on mining operations within the Green Belt stating that minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored. It goes on to state the statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with

the purposes of including land in the Green Belt.

5.5 Visual amenity is also addressed within PPG2, with the following advice: the visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design.

5.6 Secondly, it is important to set out the relevant principles with PPS10: Sustainable Waste Management. PPS10 states that "the overall objective of Government policy on waste, as set out in the strategy for sustainable development, is to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Through more sustainable waste management, moving the management of waste up the 'waste hierarchy' of reduction, reuse, recycling and composting, using waste as a source of energy, and only disposing as a last resort the Government aims to break the link between economic growth and the environmental impact of waste. This means a step-change in the way waste is handled and significant new investment in waste management facilities".

5.7 PPS10 at paragraph 3 also provides key principles relating to waste management, one of which is of particular importance to the Green Belt. This states that planning strategies should "protect green belts but recognise the particular locational needs of some types of waste management facilities when defining detailed green belt boundaries and, in determining planning applications, that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission".

5.8 It is understood that a Planning Inspector has previously concluded that the same type of recycling activity on this site would affect openness, but that was for a permanent facility. The present application proposes plant and stockpiles to be at the site for up to 25 years, which is a substantial time and the impact on the openness would be relatively the same.

5.9 Whilst mineral extraction need not be inappropriate development, the same does not necessarily apply to waste processing, which could take place at source outside the Green Belt. The HOS for DC&MD has no doubt that despite its temporary nature, this proposal would cause harm by way of inappropriateness and an effect on the openness of the Green Belt. The site lies in the open countryside outside the boundary of any settlement, the installation of the ARF and associated formation of stock piles of materials together with the proposed portacabin building and retention of the existing site office, weighbridge and wheelwash facility would be significant and would conflict with the guidance contained in PPG2 and Policies SP5 and CO4 of the South East Plan 2009 and GB1 of the adopted Cherwell Local Plan, unless very special circumstances exist that outweigh the harm to the Green Belt. .

5.10 The proposed Aggregates Recycling Facility (ARF)

Given that the development is by definition inappropriate development in the Green Belt, it is therefore necessary to consider whether the harm is clearly outweighed by other considerations and whether very special circumstances exist.

5.11 The proposed recycling facility will operate in conjunction with the permitted development at Shipton-on-Cherwell Quarry. The facility will allow the Applicant to take materials which by their nature will be unsorted to degree, separate them into inert non-recyclable material and recyclable material. The inert non-recyclable material will subsequently be landfilled within the current void.

5.12 The plant will include a crusher and a screener. Indicative dimensions of the type of plant to be installed on site include a crusher that will be approximately 4m high and 14m long, while a screener will be approximately 3m high and 14m long.

5.13 Material will be loaded onto the crusher first and then pass on the screen to produce grades of recycled aggregates and to recover topsoil and subsoil. The processed material will be stored in temporary stockpiles and will be exported from site as and when required for reuse in predominantly development and restoration works.

5.14 During the life of the proposal, construction of the development platform will take place in a phased approach, as detailed within the Phased Operations Plan (Drawing 3B). A four phased approach is proposed, and the plant and stockpiles will be located within the remaining three phases while the infill is undertaken within each phase. Once the development platform has been constructed, the plant and stockpiles will be relocated as detailed within Drawing 3A, which shows the final position of the plant and stockpiles within the application area. The final position of the plant and stockpiles takes into consideration the location of the motor vehicle pre-delivery inspection (PDI) building permitted under the extant permission and ensures all plant and stockpiles are located within the western part of the application area to allow the PDI building to be constructed. In this way, the applicant considers that the proposed facility will integrate with the permitted development without disrupting it.

5.15 In addition to recycling and recovery of materials from imported waste material the ARF would be beneficial in being able to recover and process suitable inert materials for both potential export and or re-use within site engineering works for the landfilling works required under the Environmental Permit.

5.16 Whilst the applicant has advised that the facility will only process inert construction and demolition waste imported at the site from construction and utilities projects within the local area, this could not necessarily be controlled and could come from anywhere. However, waste will be imported onto site as permitted under consent 10/00360/CM and it is anticipated that up to 60% of the imported material will be

suitable for recycling prior to reuse as secondary aggregate materials.

5.17 The ongoing recycling and restoration works will also generate an element of non-recyclable material which will be used on site as part of the infill and restoration works. It is estimated that this would account for approximately 40% of the total incoming material (i.e. 100,000 tonnes per year).

5.18 The facility will have a capacity of 250,000 tonnes per annum. Conditions 6 and 7 of planning permission 10/00360/CM allow the importation of up to 250,000 tonnes of waste by road for up to three years (up to a maximum of 750,000 tonnes in total). This permission will be the subject of a further Section 73 application (which is reported separately in this agenda under 11/01402/CM) to permit the continuation of development without compliance with these two conditions, to provide the operator with the flexibility to import up to 250,000 tonnes per annum of waste by road until restoration of the entire site is complete.

5.19 In terms of timescale, the aggregate recycling activities will be temporary in nature and will be carried out in association with the ongoing infill activities. The proposed development is for a temporary period of up to 25 years in accordance with the overall timescales associated with planning permission consent no. 10/00360/CM dated June 2010.

5.20 Clearly the proposed ARF is a new facility to be installed at the site and taking the above into account will promote the recycling of aggregates, diverting them from landfill and pushing waste up the waste hierarchy, in accordance within national and regional planning policy. The development will contribute towards helping Oxfordshire County Council reach their recycling targets, as set out within the South East Plan (2009). These benefits must be weighed against the potential harm to the amenity of the Green Belt.

5.21 Also material to the consideration of the application is the fact that the material to be imported into the site will be via road and given that the other application elsewhere on this agenda, seeks to vary the condition of the previous consent relating to the import of waste beyond the initial 3 year period. It is possible that the approval of that application may reduce the applicant's urgency in securing a rail linked contract, which may ultimately never be secured, leaving all the importation of waste to be carried out by road.

5.22 Harm to residential amenity

Taking the comments of the Anti-Social Behaviour Manager into account, the HOS for DC&MD considers that subject to specific conditions there would be no significant harm to residential amenities of the occupiers of properties on Jerome Way including 5 and 6 Railway Cottages South of the site and residential properties on Bunkers Hill Rd North West of the site.

5.23 Harm to Ecology

The rock faces exposed by the previous quarrying work has resulted in the statutory designation of the parts of the quarry as a geological Site of Special Scientific Interest (SSSI). The ARF is to be situated outside of the designated area. The haul road, which forms part of the application area, does pass through the SSSI, however this is an existing road, and no further impact is anticipated as a result of the proposed development. In addition to the SSSI designation, Shipton Quarry is designated as a County Wildlife Site with lowland meadows (including other areas of unimproved neutral grassland) and eutrophic standing water, as listed in section 74 of the Countryside and Rights of Way Act 2000.

5.24 Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, "local planning authorities should consult Natural England before granting planning permission" and paragraph 99 goes onto advise that "it is essential that the presence or otherwise of protected species, and the extent 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."

5.25 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".

5.26 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.

5.27 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which

include:

1) is the development needed for **public heath or public safety** or **other imperative reasons of overriding public interest including those of a social or economic nature** (development).

2) Is there any **satisfactory alternative**?

3) Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?

5.28 Therefore where planning permission is required and protected species are likely to be found to be present at the site or surrounding area, Regulation 9(5) of Conservation Regulations 2010 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 (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council's Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.

5.29 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:

1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission

2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission

3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)

[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]
[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case)

NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.

5.30 In respect to the application site, due consideration of the SSSI and the County Wildlife Site and protected species within it has been had by the CDC's and OCC's Ecologists, BBOWT and Natural England based on the surveys undertaken at the site by the applicant. Mitigation and Translocation Method Statements for the

reptiles on the site have also been duly considered.

5.31 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 Policy C2 of the adopted Cherwell Local Plan.

5.32 Conclusion

The HOS for DC&MD has reservations about the scheme and that despite its apparent temporary nature, this proposal would cause harm by way of inappropriateness and an effect on the openness of the Green Belt. Clearly there are benefits associated with the ARF and the potential to increase recycling, however the HOS for DC&MD is not convinced that these amount to very special circumstances that outweigh the presumption against inappropriate development in the Green Belt.

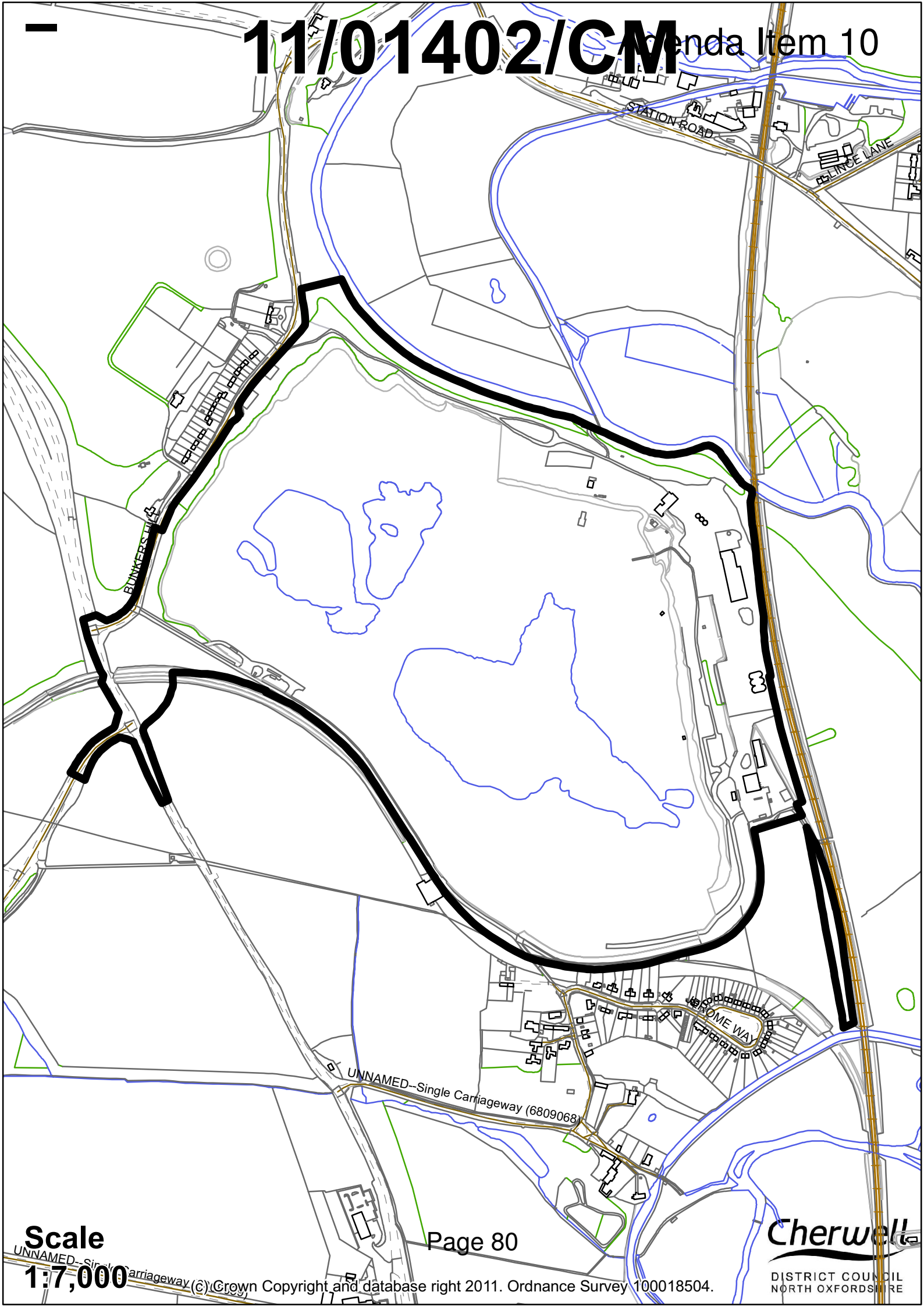
6. Recommendation

That Oxfordshire County Council be advised that Cherwell District Council has reservations about the scheme and that despite its apparent temporary nature, this proposal would cause harm by way of inappropriateness and an effect on the openness of the Green Belt. Clearly there are benefits associated with the ARF and the potential to increase recycling, however the Council is not convinced that these amount to very special circumstances that outweigh the presumption against inappropriate development in the Green Belt, but OCC is best placed to assess whether a very special circumstances case can be made in relation to Green Belt Policy.

The comments made the Cherwell District Council's Anti Social Behaviour Manager and OCC's Ecologist should however be taken into account during the determination of the application.

Cherwell District Council request that they be informed of the outcome of the application once a decision has been made.

CONTACT OFFICER: Tracey Morrissey TELEPHONE NO: 01295 221812



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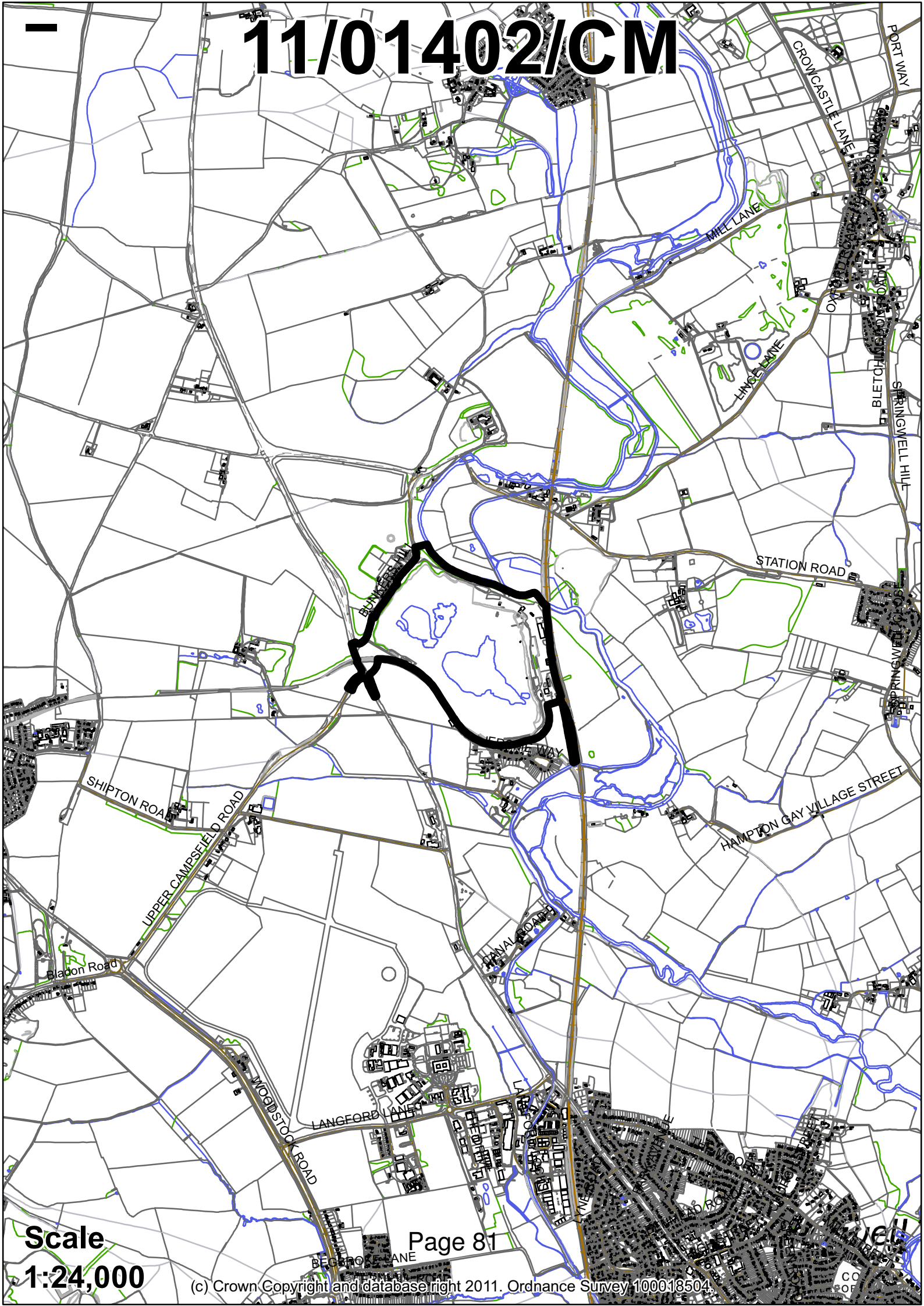
Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE


11/01402/CM
PORT WAY
CROWCASTLE LANE
MILL LANE
LINGE LANE
SPRINGWELL HILL
STATION ROAD
SHIPTON ROAD
UPPER CAMPSFIELD ROAD
HAMPTON GAY VILLAGE STREET
CANAL ROAD
Bladon Road
WOODSTOCK ROAD
LANGFORD LANE
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Application No: 11/01402/CM	Ward: Kirtlington	Date Valid:15 September 2011
Applicant:	Hansteen Land Ltd	
Site Address:	Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire	

Proposal: Continuation of development without complying with condition 6 (importation of waste by road) and with the variance of conditions 1 (time limits) and 7 (volume of waste imported) of planning permission 10/00360/CM, dated 17 June 2010 (OCC ref. MW.0120/11)

1. Site Description and Proposal

1.1 Shipton on Cherwell Quarry is a limestone quarry, which extends to approximately 67 hectares. The quarry is located to the north of the village of Shipton on Cherwell and east of the A4260. To the north eastern boundary of the quarry, the land falls away to the Oxford Canal/ River Cherwell, which runs along the edge of the site. Along the eastern boundary is the Birmingham to Oxford Rail line. Bletchingdon lies approximately 2km to the east of the site. To the north west of the site is the linear settlement of Bunkers Hill, separated from the Quarry by the A4095. The quarry has been designated a County Wildlife Site and parts of the quarry are designated as a Site of Special Scientific Interest (SSSI) so has high ecological interest. The site is also within the Oxford Green Belt. A public right of way runs close to the site and the site is potentially contaminated.

1.2 This application seeks the comments of Cherwell District Council on a planning application currently being dealt with by Oxfordshire County Council to continue the comprehensive restoration and redevelopment of the quarry originally approved in 2009 under application 06/02046/CM and as varied by application 10/00360/CM, without complying with condition 6, which also involves the variation of conditions 1 and 7.

1.3 Condition 1 relates to ensuring the development is carried out in accordance with the plans and documents submitted with the application (which are listed).

The proposed variation of condition 1 results from the proposed aggregate recycling facility (addressed under application 11/01372/CM elsewhere on this agenda). The phasing plans for the restoration and redevelopment works need to be changed to detail the location of this recycling facility and as such condition 1 needs to be varied to address this.

1.4 Condition 6 states:

No waste or any material needed for the construction of the area which will take construction, demolition or excavation wastes shall be imported to the site by road

after 3 years from the date when the import began. That date shall be notified to the waste planning authority in writing within one week of the start of road imports of such waste or materials.

Reason: To ensure that sufficient waste is available to restore existing landfill sites in Oxfordshire and to ensure the maximum use of the rail connection (SEP M3, W13, W17).

1.5 The non compliance of condition 6 is proposed due to delays in securing a rail linked inert waste contract and as such, the operating company propose to continue to import by road beyond the three year period to allow the works to commence and be undertaken in accordance with the restoration scheme.

1.6 Condition 7 states:

No more than 250,000 tonnes of waste shall be imported by road in any period of a year starting when waste and materials imports by road begin. In any event, no more than 750,000 tonnes of waste or materials shall be imported to the site by road as part of this permission.

Reason: To ensure that sufficient waste is available to restore existing landfill sites in Oxfordshire and to ensure the maximum use of the rail connection (SEP M3, W13, W17).

1.7 The applicants request the continued road importation of waste for the duration of the restoration works. As a result of this proposal, condition 7 must be varied, as although within the supporting statement it is stated that no more than 250,000 tonnes per year would be imported into the site, clearly the maximum requirement that 750,000 tonnes overall, could not be met. As such, it is requested that condition 7 be varied to allow the importation of no more than 250,000 tonnes of waste or material per year from when the waste and materials imports by road begin (but would include no end point or no maximum amount).

1.8 Planning history

The site has a long history which is set out on the file, however the most relevant applications are:

06/02046/CM (Permitted) Comprehensive restoration and development of quarry. This development programme incorporated:

- Mineral extraction;
- The import of inert engineering fill to raise the quarry floor above water level;
- The comprehensive restoration of the site, including development of open storage yard areas principally for the storage of cars with an associated inspection building for a period of no more than a 15 year temporary operational period, and a rail storage depot, both supported by a new rail terminal; and

- Two class B8 warehouse buildings and a rail aggregates depot.

Comments were submitted to OCC to this proposal under application numbers 07/00996/CM (Objection) and 07/02011/CM (Objection). The objections were based on the fact that the development is inappropriate development in the Green Belt and that the special circumstances put forward did not outweigh the harm to the purposes and objectives to the Green Belt.

10/00360/CM (No Objection) To continue development without complying with conditions 26 and 36 of 06/02046/CM (these conditions related to site investigation surveys). **(This application repeated all conditions from the earlier application and so supersedes the original consent)**.

11/01372/CM (Pending – reported elsewhere on the agenda) The importation, storage and processing of inert construction and demolition waste, and operation of an aggregate recycling facility on land at Shipton on Cherwell Quarry. Retention of the existing weighbridge, site office and wheelwash to facilitate the operation of the proposed recycling facility (OCC ref. MW.0119/11)

2. Application Publicity

2.1 As this matter is a County Matter, all publicity has been undertaken by Oxfordshire County Council.

3. Consultations

3.1 As this matter is a County Matter, all formal consultations have been undertaken by Oxfordshire County Council. However, internal consultations have been undertaken:

3.2 CDC Anti Social Behaviour Manager: No observations or objections

CDC Landscape: No direct landscape impact except where it impacts on the volumes of fill generated and the eventual use of the fill

No comments have yet been received from CDC Contaminated Land Officer, Ecologist or Rights of way Officer.

4. Relevant Planning Policies

4.1 PPS1: Delivering Sustainable Development
PPG2: Green Belts
PPS9: Biodiversity and Geological Conservation
PPS10: Sustainable Waste Management
PPG13: Transport
PPS25: Development and Flood Risk

4.2 The South East Plan: Policies BE1, CO4, waste policies

4.3 Adopted Cherwell Local Plan: Policies GB1, C7

4.4 Oxfordshire Minerals and Waste Local Plan

5. Appraisal

5.1 The applicant is seeking to vary condition 6 due to the inability to secure a rail linked inert waste contract. The consequence of which means that, in order to continue with the permitted development, the applicant needs to be able to continue, beyond the three year permitted period, to import and export waste and material by road. As such, it is proposed that this condition is removed from the permission to allow the use of the road network beyond the permitted three years.

5.2 As set out in paragraph 1.2, this would then have an implication on condition 7, as this condition provides a restriction on the overall amount of material which can be imported by road, within the three year period (as well as annually, however this is not envisaged to be exceeded). As such, the applicant seeks that this condition be varied to remove the reference to the total amount of material which can be imported by road to give the applicant flexibility in this respect.

5.3 Further, condition number 1 would need to be varied to allow the plans and documents to be changed from those currently included within the list of approved documents to address the changes proposed to conditions 6 and 7.

5.4 In terms of the merits of the proposals, the change to the conditions is unlikely to have any greater impact upon the openness or visual amenities of the Green Belt, given that ultimately the change to the conditions relates to the way in which waste and material is transported to and from the site rather than a change to the volume of material or how the material will be processed. Furthermore, it is the HOS for DC&MD's view that there is unlikely to be significantly greater impact upon the visual amenities of the area and wider landscape, the residential amenity of neighbouring properties or the ecology of the area than the impact which has already been considered and approved as part of the original planning permission granted.

5.5 However, there is clearly a highway implication from the proposals. It is noted that the County Council will have consulted their highway officers directly. Their response has not been seen, however the HOS for DC&MD does have some concerns in relation to the highway implications that could arise and the impact that the changes to the conditions could have on the intentions and aims of the original planning permission.

5.6 The submitted documents state that the applicant continues to hold the intention that importation of inert material will occur by rail into the site, however, that this is dependant on being able to secure a rail linked inert waste contract, which has not currently proved possible due to a number of factors.

5.7 The HOS for DC&MD's concern lies in the fact that the approval of this permission will lead to the use of the highway network over a greater period of time, to which no end date/restricted time period has been identified. This greater flexibility that would be experienced may then reduce the applicant's urgency in securing a rail linked contract, which may ultimately never be secured, leaving all the importation of waste and material to be carried out by road.

5.8 The total period of time this could occur for is temporary, however it appears that this could be for a maximum of 25 years (22 years longer than originally approved), which is still a significant period of time. It is noted that a routeing agreement is in place, which it is assumed will continue to apply and this is considered necessary if the application were to be approved.

5.9 This application is being considered at the same time as a proposal to establish an aggregate recycling facility at the Quarry. The waste is understood to be a product of the material being imported to the site in accordance with the approved scheme, but clearly some of the waste is to be recycled and some of the non-suitable imported inert waste will be deposited within the ongoing consented and permitted quarry restoration works at the site.

6. Recommendation

That Oxfordshire County Council be advised that Cherwell District Council has concerns in relation to this proposal as the variation of conditions has the potential to increase traffic movements to the site for a significant period of time to which no end date/restricted time period has been identified. The approval of this may reduce the applicant's urgency to secure a rail linked waste contract leading to the continued use of the road network for accessing the site, for a period of time which although is temporary, is for a significant amount of time.

Cherwell District Council request that they be informed of the outcome of the application once a decision has been made.

CONTACT OFFICER: Tracey Morrissey TELEPHONE NO: 01295 221812

Planning Committee

Variation of s106 agreement
Rural Housing Trust Properties
Congyer Close Bletchingdon
Sands Close Islip

3 November 2011

Report of Head of Service 8

PURPOSE OF REPORT

To propose a variation to a s106 agreement made with the Rural Housing Trust which would enable better access to mortgage finance for prospective purchasers of shared ownership units

This report is public

Recommendations

The Planning Committee is recommended to:

(1) Approve the variation of the s106 agreement

Executive Summary

Introduction

1.1 The Council works with Housing Association partners to provide shared ownership schemes for people who cannot afford to purchase outright on the open market

1.2 We have been asked by the Rural Housing Trust to vary the terms of a s106 agreement to allow better access to mortgage finance for prospective purchasers of their properties in Bletchingdon and Islip

Proposals

1.3 The Council should enter into a deed of variation in accordance with the Rural Housing Trusts request to vary the ownership of these properties to a traditional shared ownership lease.

Conclusion

1.4 It is difficult to obtain mortgage finance on these properties with the current ownership arrangement and the Council should use this opportunity to improve access to shared ownership in the event of a resale for prospective purchasers.

Background Information

2.1 In 1996, The Rural Housing Trust (RHT) developed properties in Islip and Bletchingdon for sale on a shared ownership basis. The organisation originally developed a model of fixed equity shared ownership housing where RHT are joint owners with the purchaser, and both parties sign a Deed of Trust which specifies the percentage owned. This was agreed in a s106 agreement between the Council and the RHT, as follows:-

"the Association shall cause each purchaser or a dwelling to enter into a Transfer and Deed of Trust in the form, or substantially in the form, of the Deed of Trust attached hereto"

2.2 RHT therefore hold the property with the purchasers as 'Tenants in Common' in unequal shares. The original reason for selling the shared ownership housing this way was to cap the share that could be purchased and prevent outright ownership. Now there is legislation to ensure that "staircasing" on shared ownership properties in small rural settlements is capped at 80%

2.3 RHT have found that only one mortgage lender is prepared to offer mortgage finance on this basis and has asked the Council to vary the agreement. It is their belief that a failure to do so will effectively render the properties unsaleable.

Key Issues for Consideration/Reasons for Decision and Options

3.1

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

Option One Vary the s106 agreement

Option Two Not vary the s106 agreement

Implications

Financial: There are no financial implications for the Council arising from the variation of the s106

	Comments checked by Karen Curtin, Head of Finance 01295 221551
Legal:	The s106 agreement must be varied with a further agreement. Comments checked by Nigel Bell, Team Leader – Planning & Litigation, 01295 221687
Risk Management:	There is a risk to the Rural Housing Trust if the s106 is not varied that the properties would become unsaleable and that residents would be unable to re-mortgage them. This carries a small risk to the Council's ability to meet its strategic objectives Comments checked by Claire Taylor, Corporate Performance Manager 01295 221563
Equality and diversity	Varying the s106 agreement will improve access to resale shared ownership properties Comments checked by Claire Taylor, Corporate Performance Manager 01295 221563

Wards Affected

Kirtlington (Bletchingdon) and Otmoor (Islip)

Document Information

Appendix No	**Title**
None	
Background Papers	
None	
Report Author	Kate Winstanley, Strategic Housing Officer
Contact Information	01295 221648 Kate.winstanley@Cherwell-dc.gov.uk

Planning Committee

Tree Preservation Order (no. 02/2011) Yew Tree at Holy Trinity Church, Shenington

3 November 2011

Report of Director 3

PURPOSE OF REPORT

To seek the confirmation Tree Preservation Order no 02-11 with one objection relating to a Yew tree at Holy Trinity Church, Shenington (copy plan attached at appendix 1)

This report is public

Recommendations

The Planning Committee is recommended to:

(1) Confirm Tree Preservation Order (02/2011) at the site of Holy Trinity Church, Shenington without modification in the interest of public amenity.

Summary

Introduction

i. The District Council made an emergency Tree Preservation Order on 9 February 2011 following a site visit to assess a section 211 (Town and Country Planning Act 1990) notification to undertake tree works to trees (no.11/0004/TCA) within the Alkerton and Shenington conservation area. Two other trees within this notification have not been protected as they provided only limited local amenity,

ii. The tree to be protected is a mature Yew tree situated in the Trinity Church grounds in close proximity to the boundary wall between the church and The Old School

Guidance in determining the suitability of a tree for a TPO is provided by the TEMPO method (Tree Evaluation Method for Preservation Orders). This has been undertaken and the results included in this document as appendix 2.

It is in a prominent position situated to the front of The Old School on a raised area within the adjacent churchyard clearly visible from the street through Shenington. It provides a significant contribution to the local amenity and adds to the character of the churchyard.

One letter objecting to the TPO has been received from:

i. Mr Keith Hainsworth, Mill House, Street Through Shenington, Shenington Oxfordshire, OX16 3HA.

The objections and due consideration are as follows:

a. The tree already has protection being situated within a conservation area and is not a “threatened“tree apart from requiring the occasional pruning as do other trees within the churchyard.

CDC The council requires notification prior to works on trees within conservation areas. Where the works are considered inappropriate with regard to tree health, will have a negative impact on the local landscape and are worthy of protection, the only way the works can be stopped is to install a Preservation Order.

The section 211 notification (notification of works) was considered sufficient threat to protect the tree to maintain its contribution on the local landscape and the character of the churchyard.

b. Other trees within the village are considered better in the opinion of the objector and these are not protected so why is it necessary to protect this individual?

CDC As a.

e. Feels that the installation of a TPO will burden the Parish Council unnecessary administration.

CDC The Parish Council do not administer Preservation Orders and therefore will not be burdened by additional works. They are invited to comment on applications to carry out works to protected trees in the same way as section 211 notifications. There is no cost to applicant or the Parish Council to apply to carry out works to protected trees.

The human rights of the objectors and others affected by the decision, i.e. Article 1 of the first protocol – right to peaceful enjoyment of possessions and Article 8 protection of the right to respect ones private and family life, home and correspondence, were taken into consideration by the amenity value checklist (TEMPO assessment) completed when the Tree Preservation Order was made. To confirm the Order does not place a disproportionate burden on the owner, who retains the right to make applications for works to the tree.

Conclusion

1. The issues raised by the objector have been addressed and it is recommended that the Committee confirm Tree Preservation Order 02-11 without modification.

Background Information

1. Statutory powers are provided through :

    i. Section 198 Town and Country Planning Act 1990.

    ii. Town and Country Planning (Trees) Regulations 1999

2. The Scheme of Reference and Delegation authorises the Strategic Director Planning, Housing and Economy and 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.

3. The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments and made on 9 April 2009. The statutory objection period has now expired and one objection was received to the Order.

Key Issues for Consideration/Reasons for Decision and Options

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

Option One To confirm the Tree Preservation Order

Option Two Not to confirm the Tree Preservation Order

Implications

Financial: The cost of processing the Order can be contained within existing estimates.

Comments checked by Karen Muir, Corporate Systems Accountant, Karen.muir@cherwell-dc.gov.uk 01295 221559

Legal: The Council has the power under s198 Town and Country Planning Act 1990 to make a tree preservation order if it appears expedient in the interests of amenity. The committee must consider any objections and representations duly made.

Comments checked by Ross Chambers, Solicitor, ross.chambers@cherwell-dc.gov.uk 01295 221690

Risk Management: The existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such a tree is structurally sound and poses 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 Claire Taylor, Corporate Performance Manager, claire.taylor@cherwellandsouthnorthants-dc.gov.uk 0300 0030113

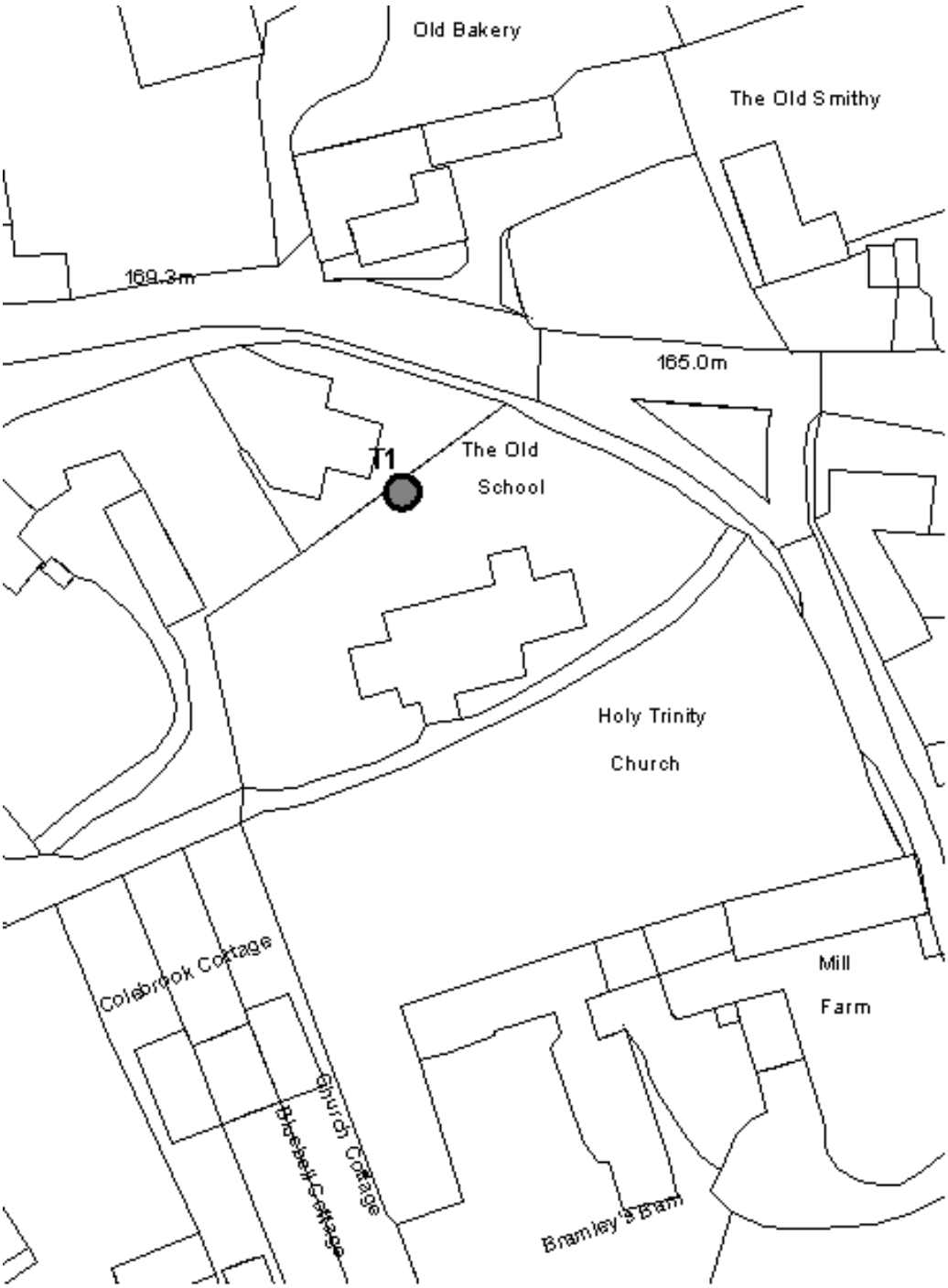
Wards Affected

Wroxton

Document Information

Appendix No	Title
Appendix 1	Plan
Appendix 2	TEMPO assessment
Appendix 3	TEMPO assessment guidance notes
Background Papers	
TPO file reference 02-11	
Report Author	Mark Harrison, Arboricultural Officer - North
Contact Information	01295 221804 mark.harrison@Cherwell-dc.gov.uk

Appendix 1 - Plan



Old Bakery
The Old Smithy
169.3m
165.0m
T1
The Old
School
Holy Trinity
Church
Mill
Farm
Colebrook Cottage
Church Cottage
Bluebell Cottage
Bramley's Barn

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

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

Surveyor: M Harrison **Date:** 09/02/11 **Species:** **1 no. Yew**

Location: Holy Trinity Church, Street Through Shennington

TPO Ref (if applicable): **Tree/Group No:** **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)*

	5) Good Highly suitable	Notes *The tree has several narrow forks Which is normal for this species. Stem has grown around a secondary stem stub but does not affect its stability*
X	3) Fair Suitable	
	1) Poor Unlikely to be suitable	
	0) Dead Unsuitable	
	0) Dying/dangerous* Unsuitable	

Sub Total **3**

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)*

	5) 100+ Highly suitable	Notes *The tree has sufficient room at the present time. Size may become an issue in time but this can be addressed by minor pruning.*
X	4) 40-100 Very suitable	
	2) 20-40 Suitable	
	1) 10-20 Just suitable	
	0) <10* Unsuitable	

Sub Total **4**

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

	5) Very large trees with some visibility, or prominent large trees Highly suitable	Notes *The tree Is clearly visible from the main Street through Shennington.*
X	4) Large trees, or medium trees clearly visible to the public Suitable	
	3) Medium trees, or large trees with limited view only Suitable	
	2) Young, small trees, or medium/large trees visible only with difficulty Barely suitable	
	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*

	5) Principal components of arboricultural features, or veteran trees	Notes
	4) Tree groups, or members of groups important for their cohesion	
	3) Trees with identifiable historic, commemorative or habitat importance	
	2) Trees of particularly good form, especially if rare or unusual	
X	1) Trees with none of the above additional redeeming features	

Sub Total **1**

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

X	5) Immediate threat to tree	Notes *Conservation notification area notification of removal.*
	3) Foreseeable threat to tree	
	2) Perceived threat to tree	
	1) Precautionary only	

Sub Total **5**

1.1 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 **16** **Decision: TPO warranted**

Comments

Appendix 2

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

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

Surveyor: M Harrison **Date:** 09/02/11 **Species:** **1 no. Yew**

Location: Holy Trinity Church, Street Through Shennington

TPO Ref (if applicable): **Tree/Group No:** **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)*

	5) Good Highly suitable	Notes *The tree has several narrow forks Which is normal for this species. Stem has grown around a secondary stem stub but does not affect its stability*
X	3) Fair Suitable	
	1) Poor Unlikely to be suitable	
	0) Dead Unsuitable	
	0) Dying/dangerous* Unsuitable	

Sub Total **3**

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)*

	5) 100+ Highly suitable	Notes *The tree has sufficient room at the present time. Size may become an issue in time but this can be addressed by minor pruning.*
X	4) 40-100 Very suitable	
	2) 20-40 Suitable	
	1) 10-20 Just suitable	
	0) <10* Unsuitable	

Sub Total **4**

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

	5) Very large trees with some visibility, or prominent large trees Highly suitable	Notes *The tree Is clearly visible from the main Street through Shennington.*
X	4) Large trees, or medium trees clearly visible to the public Suitable	
	3) Medium trees, or large trees with limited view only Suitable	
	2) Young, small trees, or medium/large trees visible only with difficulty Barely suitable	
	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*

	5) Principal components of arboricultural features, or veteran trees	Notes
	4) Tree groups, or members of groups important for their cohesion	
	3) Trees with identifiable historic, commemorative or habitat importance	
	2) Trees of particularly good form, especially if rare or unusual	
X	1) Trees with none of the above additional redeeming features	

Sub Total **1**

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

X	5) Immediate threat to tree	Notes *Conservation notification area notification of removal.*
	3) Foreseeable threat to tree	
	2) Perceived threat to tree	
	1) Precautionary only	

Sub Total **5**

1.1 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 **16** **Decision: TPO warranted**

Comments

TREE EVALUATION METHOD FOR PRESERVATION ORDERS:

TEMPO

Guidance Note for Users

May 2005

Introduction

Background

The impetus to take a fresh look at existing TPO suitability evaluation methods grew out of the preparation for a local authority of a detailed Method Statement for reviewing Tree Preservation Orders (TPOs). The client wanted the Method Statement to include a reliable means of assessing trees for TPO suitability.

Having looked closely at what was already available, JFL decided that there was considerable room for improvement, as each of the better-known existing methods has disadvantages.

Accordingly, TEMPO has been developed by JFL whilst at CBA Trees as a direct response to the apparent continuing uncertainty about what attributes a tree should have in order to merit statutory protection by TPO.

Overview

TEMPO is designed as a guide to decision-making, and is presented on a single side of A4 as an easily completed pro forma. As such, it stands as a record that a systematic assessment has been made (ref. Blue Book 2000 para. 3.3).

TEMPO considers all of the relevant factors in the TPO decision-making chain. In this connection, it is helpful to revisit the wording of the Blue Book:

> 'Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO.' (para. 3.4)

From this, it is clear that most existing methods are inadequate, seeking as they do solely to consider the tree rather than any known threats to its retention. TEMPO corrects this omission by including an expediency assessment within the framework of the method.

Excluding the first section, which is simply the survey record and is thus self-explanatory, TEMPO is a three-part system:

Part 1 is the Amenity Assessment
Part 2 is the Expediency Assessment
Part 3 is the Decision Guide

These parts are set out and function as follows:

Part 1: Amenity Assessment

This part of TEMPO is broken down into four sections, each of which are related to suitability for TPO:

a) Condition
b) Remaining longevity
c) Relative public visibility
d) Other factors

The first three sections form an initial assessment, with trees that 'pass' this going on to the fourth section. Looking at the sections in more detail:

a) Condition

This is expressed by five terms, which are defined as follows:

GOOD - Trees that are generally free of defects, showing good health and likely to reach normal longevity and size for species, or they may have already done so

FAIR - Trees have defects that are likely to adversely affect their prospects; their health is satisfactory, though intervention is likely to be required. It is not expected that such trees will reach their full age and size potential, or if they already have their condition is likely to decline. However, they can be retained for the time being without disproportionate expenditure of resources

POOR - Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health is significantly impaired, and it is likely to deteriorate. Life expectancy is curtailed and retention is difficult

UNSAFE - Trees with severe, irremediable structural defects, including advanced decay and insecure roothold. Major collapse or toppling likely in the near term, retention therefore impossible as something worthy of protection

DEAD - Self-explanatory!

The scores are weighted towards trees in good condition. It is accepted that trees in fair and poor condition should also get credit, though for the latter this is limited to only one point. It is the author's view that unsafe and dead trees should not be placed under a TPO, hence the zero score for these categories.

Where a group of trees is being assessed under this section, it is important to score the condition of those principle trees without which the group would lose its aerodynamic or visual cohesion. If the group cannot be 'split' in this way, then its average condition should be considered.

Against each of these terms is set an assessment of TPO suitability. These assessments are designed to reflect the fact that trees which are dead, dying or dangerous (which may be equated to the 'Dead' – obviously – 'Poor' and 'Unsafe' categories above) are effectively exempt from TPO protection.

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The reason that this is included as a separate category to 'condition' is chiefly to mitigate the difficulty of justifying TPO protection for veteran trees. For example, it is necessary to award a low score for trees in 'poor condition', though many veteran trees that could be so described might have several decades' remaining longevity.

Longevity has been divided into ranges, which are designed to reflect two considerations:

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- The further ahead one looks into the future, the more difficult it becomes to predict tree longevity: hence the width of the bands increases over time

Scores are weighted towards the two higher longevities (40-100 and 100+), which follow the two higher ranges given by Helliwell.

The Arboricultural Association (AA) publishes a guide to the life expectancy of common trees (AA 4) as follows:

300 years or more	Yew
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100-150	Common ash, Norway spruce, Walnut, Red oak, Horse chestnut, Field maple, Monkey puzzle, Mulberry, Pear
70-100	Rowan, Whitebeam, Apple, Wild cherry, Catalpa, Robinia, Tree of Heaven
50-70	Most Poplars, Willows, Cherries, Alders and Birches

The above should be considered neither prescriptive nor exclusive, and it is certainly not comprehensive. However, it should assist with determining the remaining longevity of most trees, in light of their current age, health and context.

It is important to note that this assessment should be made based on the assumption that the tree or trees concerned will be maintained in accordance with good practice, and will not, for example, be subjected to construction damage or inappropriate pruning. This is because if the subject tree is 'successful' under TEMPO, it will shortly enjoy TPO protection (assuming that it doesn't already).

If a group of trees is being assessed, then the mean age of the feature as a whole should be evaluated. It would not be acceptable, for example, to score a group of mature birches based on the longevity of the single young pedunculate oak present!

As with condition, the chosen category is related to a summary of TPO suitability.

c) Relative public visibility

The first thing to note in this section is the prompt, which reminds the surveyor to consider the 'realistic potential for future visibility with changed land use'. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this probably resulting in enhanced visibility.

The categories each contain two considerations: size of tree and degree of visibility. We have not attempted to be too prescriptive here, as TEMPO is supposed to function as a guide and not as a substitute for the surveyor's judgement. However, we have found that reference to the square metre crown size guide within the Helliwell System can be helpful.

Reference is made to 'young' trees are in the lowest scoring category. This is intended to refer to juvenile trees with a stem diameter less than 150mm at 1.5m above ground level. The reasoning behind this is that such trees may be replaced by new planting, though it is accepted that replacement specimen trees towards the upper end of the given size are expensive.

In general, it is important to note that, when choosing the appropriate category, the assessment in each case should be based on the minimum criterion.

Whilst the scores are obviously weighted towards greater visibility, we take the view that it is reasonable to give some credit to trees that are not visible: it is accepted that, in exceptional circumstances, such trees may justify TPO protection (Blue Book para. 3.3.1).

Where groups of trees are being assessed, the size category chosen should be one category higher than the size of the individual trees or the degree of visibility, whichever is the lesser. Thus a group of medium trees would rate four points (rather then three for individuals) if clearly visible, or three points (rather than two) if visible with difficulty.

Once again, the categories relate to a summary of TPO suitability.

Sub-total 1

At this point, there is a pause within the decision-making process: as the prompt under 'other factors' states, trees only qualify for consideration within that section providing that they have accrued at least seven points. Additionally, they must not have collected any zero scores.

The total of seven has been arrived at by combining various possible outcomes from sections a-c.

The scores from the first three sections should be added together, before proceeding to section d, or to part 3 as appropriate (ie depending on the accrued score). Under the latter scenario, there are two possible outcomes:

- 'Any 0' equating to 'do not apply TPO'
- '1-6' equating to 'TPO indefensible'

d) Other factors

Assuming that the tree or group qualifies for consideration under this section, further points are available for four sets of criteria, however only one score can apply per tree (or group):

- 'Principle components of arboricultural features, or veteran trees' – The latter is hopefully self-explanatory (if not, refer to Read 2000). The former is designed to refer to trees within parklands, avenues, collections, and formal screens, and may equally apply to individuals and groups

- 'Members of groups of trees that are important for their cohesion' – This should also be self-explanatory, though it is stressed that 'cohesion' may equally refer either to visual or to aerodynamic contribution. Included within this definition are informal screens. In all relevant cases, trees may be assessed either as individuals or as groups

- 'Trees with significant historical or commemorative importance' – The term 'significant' has been added to weed out trivia, but we would stress that significance may apply to even one person's perspective. For example, the author knows of one tree placed under a TPO for little other reason than it was planted to commemorate the life of the tree planter's dead child (incidentally, in over 25 years it has never failed to be in flower on the child's birthday). Thus whilst it is likely that this category will be used infrequently, its inclusion is nevertheless important. Once again, individual or group assessment may apply

- 'Trees of particularly good form, especially if rare or unusual' – 'Good form' is designed to identify trees that are fine examples of their kind and should not be used unless this description can be justified. However, trees which do not merit this description should not, by implication, be assumed to have poor form (see below). The wording of the second part of this is deliberately vague: 'rare or unusual' may apply equally to the form of the tree or to its species. This recognises that certain trees may merit protection precisely because they have 'poor' form, where this gives the tree an interesting and perhaps unique character. Clearly, rare species merit additional points, hence the inclusion of this criterion. As with the other categories in this section, either individual or group assessment may apply. With groups, however, it should be the case either that the group has a good overall form, or that the principle individuals are good examples of their species

Where none of the above apply, the tree still scores one point, in order to avoid a zero score disqualification (under part 3).

Sub-total 2

This completes the amenity assessment and, once again, there is a pause in the method: the scores should be added up to determine whether or not the tree (or group) has sufficient amenity to merit the expediency assessment.

The threshold for this is nine points, arrived at via a minimum qualification calculated simply from the seven-point threshold under sections a-c, plus at least two extra points under section d. Thus trees that only just scrape through to qualify for the 'other factor' score, need to genuinely improve in this section in order to rate an expediency assessment. This recognises two important functions of TPOs:

- TPOs can serve as a useful control on overall tree losses by securing and protecting replacement planting

- Where trees of minimal (though, it must be stressed, adequate) amenity are under threat, typically on development sites, it may be appropriate to protect them allowing the widest range of options for negotiated tree retention

Part 2: Expediency assessment

This section is designed to award points based on three levels of identified threat to the trees concerned. Examples and notes for each category are:

- 'Known threat to tree' – for example, Tree Officer receives Conservation Area notification to fell
- 'Foreseeable threat to tree' – for example, Planning department receives application for outline planning consent on the site where the tree stands
- 'Perceived threat to tree' – for example, survey identifies tree standing on a potential infill plot

However, the Blue Book is clear that, even where there is no expedient reason to make a TPO, this is still an option. Accordingly, and in order to avoid a disqualifying zero score, 'precautionary only' still scores one point. This latter category might apply, rarely for example, to a garden tree under good management.

The fifth category within this section relates to reverse expediency: where trees are known to be an actionable nuisance, it is not possible effectively to protect them with a TPO, hence the zero score.

Clearly, other reasons apply that might prevent/usually obviate the need for the making of a TPO (eg the tree stands on Crown land). However, it is not felt necessary to incorporate such basic considerations into the method, as it is chiefly intended for field use: these other considerations are most suitably addressed as part of a desk study and could, if necessary, be factored into the scoring after the field work has been completed.

As a final note on this point, it should be stressed that the method is not prescriptive except in relation to zero scores: TEMPO merely recommends a course of action. Thus a tree scoring, say, 15, and so 'definitely meriting' a TPO, might not be included for protection for reasons unconnected with its attributes.

Part 3: Decision Guide

This section is based on the accumulated scores derived in Parts 1 & 2, and identifies four outcomes, as follows:

- Any 0 Do not apply TPO
  Where a tree has attracted a zero score, there is a clearly identifiable reason not to protect it, and indeed to seek to do so is simply bad practice

- 1-6 TPO indefensible
  This covers trees that have failed to score enough points in sections 1a-c to qualify for an 'other factors' score under 1d. Such trees have little to offer their locality and should not be protected

- 7-10 Does not merit TPO
  This covers trees which have either qualified for a 1d score, thought they may not have qualified for Part 2. However, and even if they have made it to Part 2, they have failed to pick up significant additional points. This would apply, for example, to a borderline tree in amenity terms that also lacked the protection imperative of a clear threat to its retention

- 11-14 Possibly merits TPO
  This applies to trees that have qualified under all sections, but have failed to do so convincingly. For these trees, the issue of applying a TPO is likely to devolve to other considerations, such as public pressure, resources and 'gut feeling'

- 15+ Definitely merits TPO
  Trees scoring 15 or more are those that have passed both the amenity and expediency assessments, where the application of a TPO is fully justified

Notation boxes

Throughout the method, notation space is provided to record relevant observations under each section. For local authorities using TEMPO, it may even be helpful to include a copy of the TEMPO assessment in with the TPO decision letter to relevant parties, as this will serve to underline the transparency of the decision-making process.

Conclusion

TEMPO is a quick and easy means of systematically assessing tree or group suitability for statutory protection. It may be used either for new TPOs or for TPO re-survey, especially where Area TPOs are being reviewed.

From the consultants' perspective, it is also an effective way of testing the suitability of new TPOs, to see whether they have been misapplied, or it can be used to support a request to make a TPO in respect of trees at risk, for example from adjacent development.

TEMPO does not seek to attach any monetary significance to the derived score: the author recommends the use of the Helliwell System where this is the objective.

CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download.

JULIAN FORBES-LAIRD MICFor., Dip.Arb.(RFS)
Registered Consultant of the Arboricultural Association

References

AA 4	'Tree Management', Leaflet No. 4, Arboricultural Association 1991
Blue Book 2000	'Tree Preservation Orders: A Guide to the Law and Good Practice', DETR 2000
Helliwell	'Amenity Valuation of Trees and Woodlands', DR Helliwell, Arboricultural Association 2003 [the Helliwell System]
Read 2000	'Veteran Trees: A Guide to Good Management', Helen Read, English Nature 2000

Agenda Item 13

Planning Committee

Tree Preservation Order (no. 10/2011)
Apple tree at Plemont, School Lane, North Newington, Banbury

3 November 2011

Report of Director 3

PURPOSE OF REPORT

To seek the confirmation Tree Preservation Order no 10-11 with one objection relating to an Apple tree at Plemont, School Lane, North Newington, Banbury, Oxon, OX15 6AQ (copy plan attached as Annex 1)

This report is public

Recommendations

The Planning Committee is recommended to:

(1) Confirm Tree Preservation Order 10-11 at the site of Holy Plemont, School Lane, North Newington be confirmed without modification in the interest of public amenity.

Summary

Introduction

1.1 The District Council made an emergency TPO on 13 July 2011 following an assessment of the tree prompted by a request by a local resident.

1.2 The tree to be protected is a mature Apple tree situated within the rear garden of Plemont in close proximity to the boundary fence separating Plemont and Appledale.

Guidance in determining the suitability of a tree for a TPO is provided by the TEMPO method (Tree Evaluation Method for Preservation Orders). This has been undertaken and the results included in this document as appendix 2.

The tree is visible from School Lane through a gap between the houses and from the rear of the houses abutting the site on Park Lane. One letter objecting to the TPO has been received from:

i. Mr M E Howarth, Appledale, North Newington, Banbury,

Oxfordshire, OX15 6AQ.

The objections and due consideration are as follows:

a. The tree was originally part of an orchard and was pruned accordingly. A preservation order will reduce the amount of pruning undertaken on the tree.

Because the tree used to be part of an orchard and pruned accordingly it is no longer in keeping with its historical purpose.

The tree has been pruned in the recent past which resulted in vigorous regrowth

CDC The assessment of the tree with regard to its suitability for protection is primarily taken on its own merits although historical significance is also considered. Because the tree was historically part of an Orchard provides further support for the installation of a Preservation Order to retain one of the last remainders of the areas previous use.

A Preservation Order does not preclude the possibility of subsequent works. An application for works can be submitted and will be considered on its own merits.

b. The tree provides limited amenity to the local area

CDC Although the view of the tree is limited from the public highway it can be seen from neighbouring properties along School Lane as well as properties situated to the rear along Park Lane.

e. The tree will continue to grow if unchecked and block out all the light

CDC A shade prediction plan has been provided as appendix 4 showing the direction and extent of shade cast by the tree between the hours of 07.00 and 16.00 on 17th July.

Although the objectors garden is partially shaded from 07.00 until 13.00 hrs this extent of the area shaded is limited and doesn't interfere with the overall enjoyment of the garden.

f. There is a safety risk of apples falling from the tree as they are too high to collect

CDC The amount of fruit produced varies from year to year and last approximately 2 – 4 weeks. The objector is aware that apples will be falling from the tree during the end of the summer into early autumn and it is reasonable to assume that he will not spend extended periods beneath the tree.

g. That the request for the protection of the trees relates to some ulterior motive.

CDC The assessment of the tree with regard to its suitability for protection is taken on its own merits with regard to its contribution to the local area and its historical and conservation

significance.

h. If allowed to grow the tree will be more susceptible to damage by strong winds. The tree has been pruned in the recent past which resulted in vigorous regrowth

CDC Should any evidence be provided that the tree has become unsafe, either as part of an application or notification of the removal of a dangerous tree this will be investigated and taken into consideration when consent or refusal is given.

The human rights of the objectors and others affected by the decision, i.e. Article 1 of the first protocol – right to peaceful enjoyment of possessions and Article 8 protection of the right to respect ones private and family life, home and correspondence, were taken into consideration by the amenity value checklist (TEMPO assessment) completed when the Tree Preservation Order was made. To confirm the Order does not place a disproportionate burden on the owner, who retains the right to make applications for works to the tree.

Conclusion

1. The issues raised by the objector have been addressed and it is recommended that the Committee confirm Tree Preservation Order 10-11 without modification.

Background Information

1. Statutory powers are provided through :

   i. Section 198 Town and Country Planning Act 1990.

   ii. Town and Country Planning (Trees) Regulations 1999

2. The Scheme of Reference and Delegation authorises the Head of Development Control and Major Developments and/or nominated officer 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.

3. The above mentioned Tree Preservation Order was authorised by the delegated officer and made on 29 September 2011. The statutory objection period has now expired and one objection was received to the Order.

Key Issues for Consideration/Reasons for Decision and Options

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

Option One To confirm the Tree Preservation Order

Option Two Not to confirm the Tree Preservation Order

Implications

Financial: The cost of processing the Order can be contained within existing estimates.

Comments checked by Karen Muir, Corporate Systems Accountant, Karen.muir@cherwell-dc.gov.uk 01295 221559

Legal: The Council has the power under s198 Town and Country Planning Act 1990 to make a tree preservation order if it appears expedient in the interests of amenity. The committee must consider any objections and representations duly made.

Comments checked by Ross Chambers, Solicitor, ross.chambers@cherwell-dc.gov.uk 01295 221690

Risk Management: The existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such a tree is structurally sound and poses 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 Claire Taylor, Corporate Performance Manager, claire.taylor@cherwellandsouthnorthants-dc.gov.uk 0300 0030113

Wards Affected

Sibford

Document Information

Appendix No	Title
Appendix 1	Plan
Appendix 2	TEMPO assessment
Appendix 3	TEMPO assessment guidance notes

Appendix 4	Shade Prediction
Background Papers	
TPO file reference 02-11	
Report Author	Mark Harrison, Arboricultural Officer - North
Contact Information	01295 221804 mark.harrison@Cherwell-dc.gov.uk

Appendix 1 - Plan

Appendix 2

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

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

Surveyor: M Harrison **Date:** 29/09/11 **Species:** **1 no. Apple**

Location: Plemont, School Lane North Newington

TPO Ref (if applicable): **Tree/Group No:** **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)*

	5) Good Highly suitable	Notes
X	3) Fair Suitable	
	1) Poor Unlikely to be suitable	
	0) Dead Unsuitable	
	0) Dying/dangerous* Unsuitable	

Sub Total **3**

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)*

	5) 100+ Highly suitable	Notes
	4) 40-100 Very suitable	*The tree has sufficient room at the present time. Size may become an issue in time but this can be addressed by minor pruning.*
X	2) 20-40 Suitable	
	1) 10-20 Just suitable	
	0) <10* Unsuitable	

Sub Total **2**

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

	5) Very large trees with some visibility, or prominent large trees Highly suitable	Notes
	4) Large trees, or medium trees clearly visible to the public Suitable	*The tree Is clearly visible from the adjacent properties but only with difficulty from the public highway.*
	3) Medium trees, or large trees with limited view only Suitable	
X	2) Young, small trees, or medium/large trees visible only with difficulty Barely suitable	
	1) Trees not visible to the public, regardless of size Probably unsuitable	

Sub Total **2**

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

	5) Principal components of arboricultural features, or veteran trees	Notes
	4) Tree groups, or members of groups important for their cohesion	
	3) Trees with identifiable historic, commemorative or habitat importance	
	2) Trees of particularly good form, especially if rare or unusual	
X	1) Trees with none of the above additional redeeming features	

Sub Total **1**

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

X	5) Immediate threat to tree	Notes
	3) Foreseeable threat to tree	*Conservation notification area notification of removal.*
	2) Perceived threat to tree	
	1) Precautionary only	

Sub Total **5**

1.1 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 **13** **Decision: TPO defensible**

Comments

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The categories each contain two considerations: size of tree and degree of visibility. We have not attempted to be too prescriptive here, as TEMPO is supposed to function as a guide and not as a substitute for the surveyor's judgement. However, we have found that reference to the square metre crown size guide within the Helliwell System can be helpful.

Reference is made to 'young' trees are in the lowest scoring category. This is intended to refer to juvenile trees with a stem diameter less than 150mm at 1.5m above ground level. The reasoning behind this is that such trees may be replaced by new planting, though it is accepted that replacement specimen trees towards the upper end of the given size are expensive.

In general, it is important to note that, when choosing the appropriate category, the assessment in each case should be based on the minimum criterion.

Whilst the scores are obviously weighted towards greater visibility, we take the view that it is reasonable to give some credit to trees that are not visible: it is accepted that, in exceptional circumstances, such trees may justify TPO protection (Blue Book para. 3.3.1).

Where groups of trees are being assessed, the size category chosen should be one category higher than the size of the individual trees or the degree of visibility, whichever is the lesser. Thus a group of medium trees would rate four points (rather then three for individuals) if clearly visible, or three points (rather than two) if visible with difficulty.

Once again, the categories relate to a summary of TPO suitability.

Sub-total 1

At this point, there is a pause within the decision-making process: as the prompt under 'other factors' states, trees only qualify for consideration within that section providing that they have accrued at least seven points. Additionally, they must not have collected any zero scores.

The total of seven has been arrived at by combining various possible outcomes from sections a-c.

The scores from the first three sections should be added together, before proceeding to section d, or to part 3 as appropriate (ie depending on the accrued score). Under the latter scenario, there are two possible outcomes:

- 'Any 0' equating to 'do not apply TPO'
- '1-6' equating to 'TPO indefensible'

d) Other factors

Assuming that the tree or group qualifies for consideration under this section, further points are available for four sets of criteria, however only one score can apply per tree (or group):

- 'Principle components of arboricultural features, or veteran trees' – The latter is hopefully self-explanatory (if not, refer to Read 2000). The former is designed to refer to trees within parklands, avenues, collections, and formal screens, and may equally apply to individuals and groups

- 'Members of groups of trees that are important for their cohesion' – This should also be self-explanatory, though it is stressed that 'cohesion' may equally refer either to visual or to aerodynamic contribution. Included within this definition are informal screens. In all relevant cases, trees may be assessed either as individuals or as groups

- 'Trees with significant historical or commemorative importance' – The term 'significant' has been added to weed out trivia, but we would stress that significance may apply to even one person's perspective. For example, the author knows of one tree placed under a TPO for little other reason than it was planted to commemorate the life of the tree planter's dead child (incidentally, in over 25 years it has never failed to be in flower on the child's birthday). Thus whilst it is likely that this category will be used infrequently, its inclusion is nevertheless important. Once again, individual or group assessment may apply

- 'Trees of particularly good form, especially if rare or unusual' – 'Good form' is designed to identify trees that are fine examples of their kind and should not be used unless this description can be justified. However, trees which do not merit this description should not, by implication, be assumed to have poor form (see below). The wording of the second part of this is deliberately vague: 'rare or unusual' may apply equally to the form of the tree or to its species. This recognises that certain trees may merit protection precisely because they have 'poor' form, where this gives the tree an interesting and perhaps unique character. Clearly, rare species merit additional points, hence the inclusion of this criterion. As with the other categories in this section, either individual or group assessment may apply. With groups, however, it should be the case either that the group has a good overall form, or that the principle individuals are good examples of their species

Where none of the above apply, the tree still scores one point, in order to avoid a zero score disqualification (under part 3).

Sub-total 2

This completes the amenity assessment and, once again, there is a pause in the method: the scores should be added up to determine whether or not the tree (or group) has sufficient amenity to merit the expediency assessment.

The threshold for this is nine points, arrived at via a minimum qualification calculated simply from the seven-point threshold under sections a-c, plus at least two extra points under section d. Thus trees that only just scrape through to qualify for the 'other factor' score, need to genuinely improve in this section in order to rate an expediency assessment. This recognises two important functions of TPOs:

- TPOs can serve as a useful control on overall tree losses by securing and protecting replacement planting

- Where trees of minimal (though, it must be stressed, adequate) amenity are under threat, typically on development sites, it may be appropriate to protect them allowing the widest range of options for negotiated tree retention

Part 2: Expediency assessment

This section is designed to award points based on three levels of identified threat to the trees concerned. Examples and notes for each category are:

- 'Known threat to tree' – for example, Tree Officer receives Conservation Area notification to fell
- 'Foreseeable threat to tree' – for example, Planning department receives application for outline planning consent on the site where the tree stands
- 'Perceived threat to tree' – for example, survey identifies tree standing on a potential infill plot

However, the Blue Book is clear that, even where there is no expedient reason to make a TPO, this is still an option. Accordingly, and in order to avoid a disqualifying zero score, 'precautionary only' still scores one point. This latter category might apply, rarely for example, to a garden tree under good management.

The fifth category within this section relates to reverse expediency: where trees are known to be an actionable nuisance, it is not possible effectively to protect them with a TPO, hence the zero score.

Clearly, other reasons apply that might prevent/usually obviate the need for the making of a TPO (eg the tree stands on Crown land). However, it is not felt necessary to incorporate such basic considerations into the method, as it is chiefly intended for field use: these other considerations are most suitably addressed as part of a desk study and could, if necessary, be factored into the scoring after the field work has been completed.

As a final note on this point, it should be stressed that the method is not prescriptive except in relation to zero scores: TEMPO merely recommends a course of action. Thus a tree scoring, say, 15, and so 'definitely meriting' a TPO, might not be included for protection for reasons unconnected with its attributes.

Part 3: Decision Guide

This section is based on the accumulated scores derived in Parts 1 & 2, and identifies four outcomes, as follows:

- Any 0 Do not apply TPO
  Where a tree has attracted a zero score, there is a clearly identifiable reason not to protect it, and indeed to seek to do so is simply bad practice

- 1-6 TPO indefensible
  This covers trees that have failed to score enough points in sections 1a-c to qualify for an 'other factors' score under 1d. Such trees have little to offer their locality and should not be protected

- 7-10 Does not merit TPO
  This covers trees which have either qualified for a 1d score, thought they may not have qualified for Part 2. However, and even if they have made it to Part 2, they have failed to pick up significant additional points. This would apply, for example, to a borderline tree in amenity terms that also lacked the protection imperative of a clear threat to its retention

- 11-14 Possibly merits TPO
  This applies to trees that have qualified under all sections, but have failed to do so convincingly. For these trees, the issue of applying a TPO is likely to devolve to other considerations, such as public pressure, resources and 'gut feeling'

- 15+ Definitely merits TPO
  Trees scoring 15 or more are those that have passed both the amenity and expediency assessments, where the application of a TPO is fully justified

Notation boxes

Throughout the method, notation space is provided to record relevant observations under each section. For local authorities using TEMPO, it may even be helpful to include a copy of the TEMPO assessment in with the TPO decision letter to relevant parties, as this will serve to underline the transparency of the decision-making process.

Conclusion

TEMPO is a quick and easy means of systematically assessing tree or group suitability for statutory protection. It may be used either for new TPOs or for TPO re-survey, especially where Area TPOs are being reviewed.

From the consultants' perspective, it is also an effective way of testing the suitability of new TPOs, to see whether they have been misapplied, or it can be used to support a request to make a TPO in respect of trees at risk, for example from adjacent development.

TEMPO does not seek to attach any monetary significance to the derived score: the author recommends the use of the Helliwell System where this is the objective.

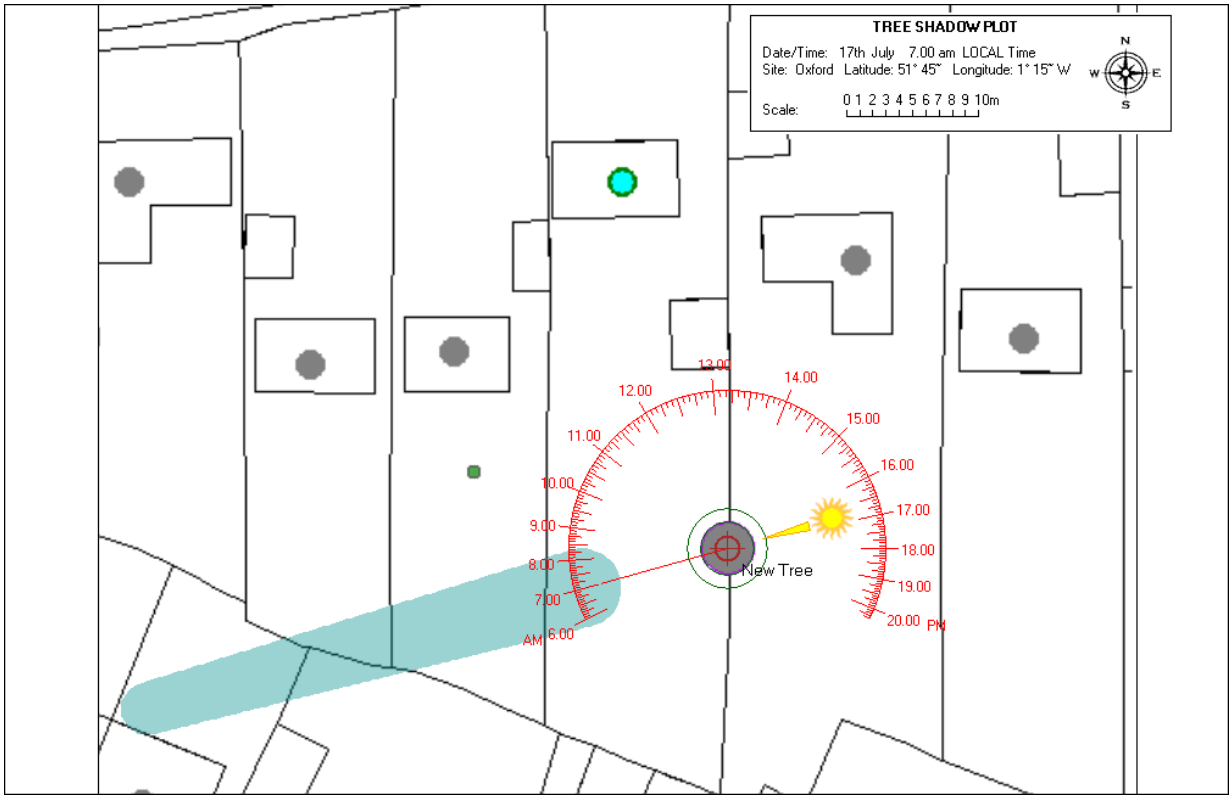
CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download.

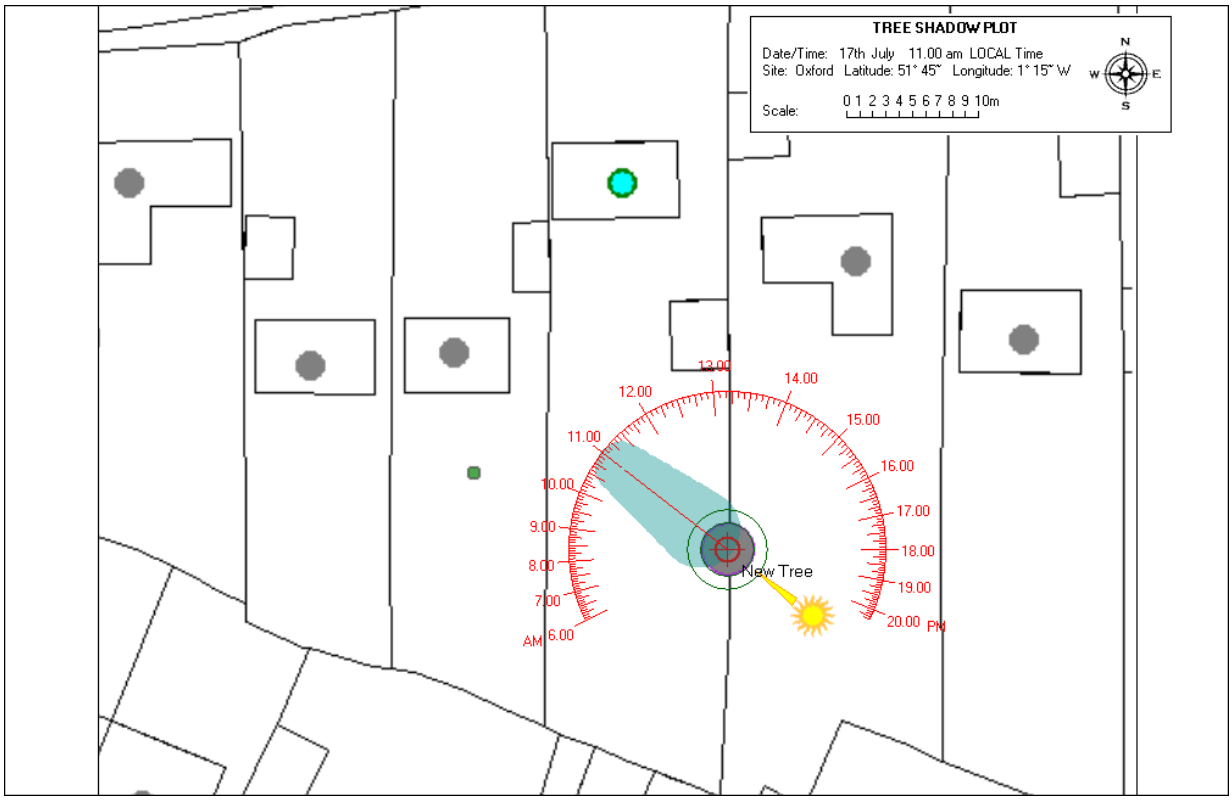
JULIAN FORBES-LAIRD MICFor., Dip.Arb.(RFS)
Registered Consultant of the Arboricultural Association

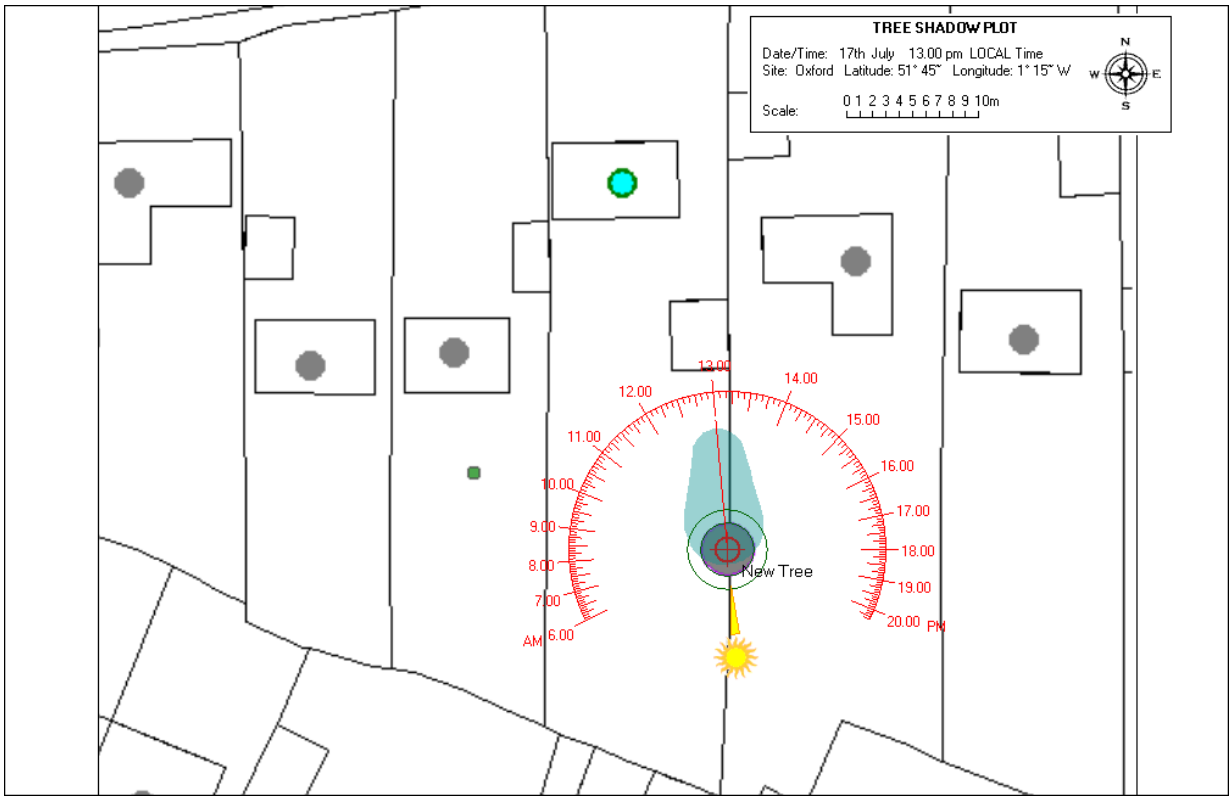
References

AA 4	'Tree Management', Leaflet No. 4, Arboricultural Association 1991
Blue Book 2000	'Tree Preservation Orders: A Guide to the Law and Good Practice', DETR 2000
Helliwell	'Amenity Valuation of Trees and Woodlands', DR Helliwell, Arboricultural Association 2003 [the Helliwell System]
Read 2000	'Veteran Trees: A Guide to Good Management', Helen Read, English Nature 2000

SHADE PREDICTION



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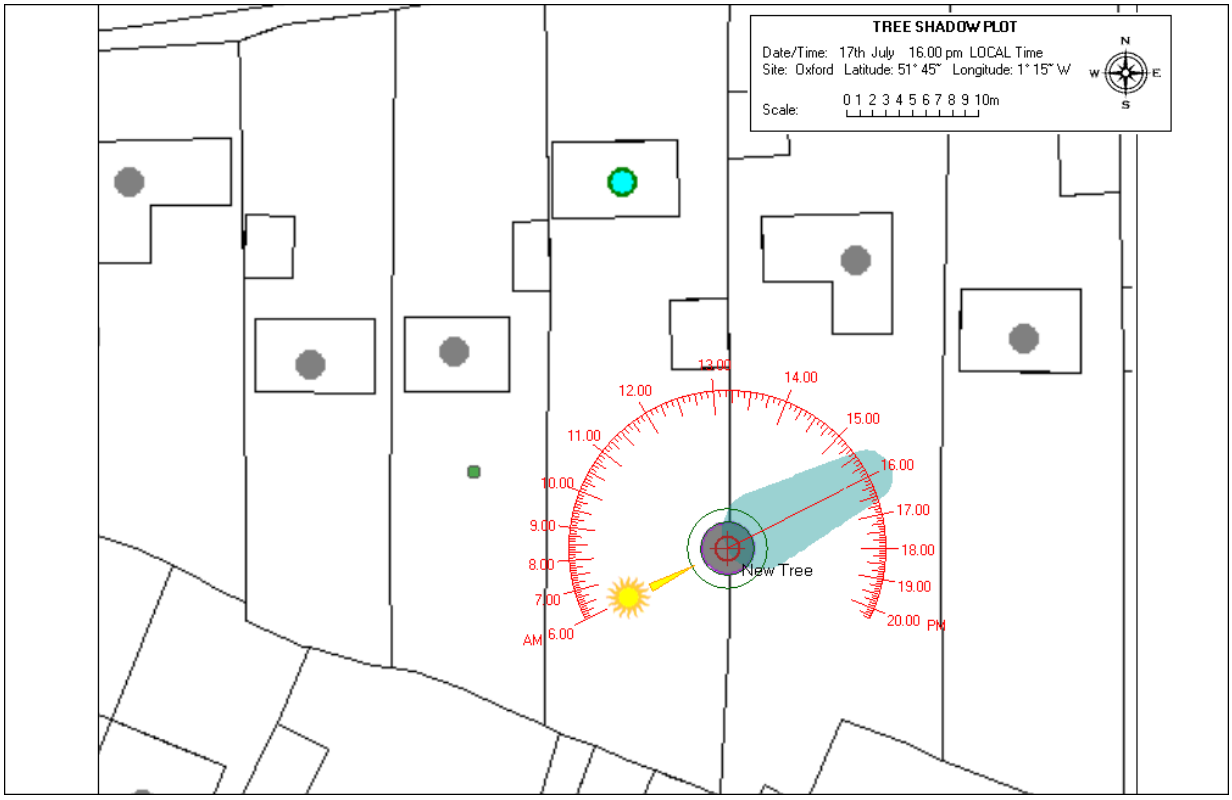
Site: Oxford Latitude: 51° 45' Longitude: 1° 15' W
Scale: 0 1 2 3 4 5 6 7 8 9 10m
N
W
E
S
12.00
14.00
11.00
15.00
10.00
16.00
9.00
17.00
8.00
18.00
7.00
19.00
AM
6.00
20.00
PM
New Tree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Scale: 0 1 2 3 4 5 6 7 8 9 10m
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W
E
S
12.00
14.00
11.00
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New Tree

Planning Committee

Decisions Subject to Various Requirements – Progress Report

3 November 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

	Development scheduled to commence in October2011
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
10/01021/F	Otmoor Lodge, Horton-cum-Studley
	Subject to legal agreement concerning building phases and interim appearance. Draft agreement prepared. Further discussions recently held (Oct 2011)
10/0110/01302/F	Land south of Bernard Close, Yarnton
(4.11.10)	Subject to legal agreement concerning on and off site infrastructure and affordable housing
10/00642/OUT	Heyford Park, Upper Heyford
(24.3.11)	Subject to planning obligations
10/01667/OUT	Land between Birmingham-London rail line and Gavray Drive, Bicester
(8.9.11)	Subject to obligation linking previous agreement to this application
10/01823/OUT	Land south of Overthorpe Rd, Banbury
(24.3.11)	Subject to legal obligation re transportation contributions and departure procedures
10/01778/F	Buildings at Heyford Park, Camp Rd., Upper Heyford
(14.7.11)	Subject to completion of Unilateral undertaking and routeing agreement
10/01780/HYBRID)	Bicester Eco Town Exemplar site, Caversfield
(11.8.11)	Subject to completion of a legal agreement as set out in resolution
11/00820/F	Penrose House, 67 Hightown Rd, Banbury
(11.8.11)	Subject to legal obligation to secure financial contributions to outdoor sports facilities, education

	and library facilities
11/00722/F	St. Georges Barracks, Arncott
(11.8.11)	Subject to submission of unilateral undertaking re monitoring fees
11/00151/F and 11/00805/F	Former DLO Caversfield
(11.8.11)	Subject to legal agreement re comprehensiveness, phasing and landscape maintenance
11/00906/F	Former Pye site, Langford Locks, Kidlington
(8.9.11)	Subject to obligation re transport infrastructure and towpath improvements
11/00974/F	42 South Bar Street, Banbury
(8.9.11)	Subject to obligation to secure financial contributions to outdoor sports facilities and other off-site infrastructure
11/00524/F	Cherwell Valley MSA, Ardley
(6.10.11)	Awaiting confirmation of appropriateness of the intended condition concerning radar interference
11/01133/CAC	Buildings rear of 81-85 Sheep St. Bicester
(6.10.11)	Awaiting Secretary of State`s approval
11/01151/F	Thames Valley Police HQ, Gosford
(6.10.11)	Subject to obligation concerning transport/parking matters

Implications

Financial:	There are no additional financial implications arising for the Council from this report. Comments checked by Karen Muir, Corporate System Accountant 01295 221559
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

Planning Committee

Appeals Progress Report

3 November 2011

Report of Development Control Team Leader

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 Planning Committee is recommended to:

(1) Accept the position statement.

Details

New Appeals

1.1 **11/00164/ECOU- Unit 3A Bessemer Close Bicester**- appeal by Mr Paul Jobling against the service of an enforcement notice alleging a breach of planning control namely, without planning permission, there has been a change of use of the land from B8 (storage and distribution) to B2 (General Industrial)- Written Reps

1.2 **11/00837/F – Fenbury, South Newington**- appeal by Mr S Smith against the refusal of planning permission for the erection of a conservatory to the side – Written Reps

1.3 **11/00279/F – 31 North Street Bicester**- appeal by Mr J Blunsden against the refusal of planning permission for the demolition of existing rear extensions and outbuildings and removal of prefabricated garaging. Development of 3 no.dwellings incorporating the original dwelling- Written Reps

1.4 **11/00927/F- Pear Tree Cottage, West Street, Shutford** – appeal by Ms S Callan against the refusal of planning permission for a first floor side extension- Written Reps

Forthcoming Public Inquiries and Hearings between 3 November 2011 and 1 December 2011

2.1 None

Results

Inspectors appointed by the Secretary of State have:

3.1 **Allowed the appeal by Mr David Goddard against the refusal of application 10/00839/F for the change of use of land for British Romany Gypsy families comprising 8 mobile homes, 8 touring caravans for nomadic use only and 8 utility day rooms at OS Parcel 2678 adjoining A34 by Hampton Gay and Poyle (Committee)** - In summary, the Inspector concluded that there is a general need for all of the 8 pitches proposed on this site and stated "Clearly the Council will not be in a position to meet the accepted need to 2011 through the development plan system, and it is likely to be some considerable time before any need is met through site identification. It is clear that the Council cannot demonstrate a 5 year supply of deliverable sites for gypsies and travellers and that they will not be able to meet the aim of the Circular. Significant weight needs to be given to the unmet need. The failure of the development plan to meet the identified need should also be given significant weight in favour of the appeal, especially as there is no dispute about the need for an additional 8 pitches within the District and given that it will be some time before the need will be met through the development plan. The lack of suitable, available alternative sites which could accommodate the entire family group should be given a significant amount of weight in favour of the appeal." In the Inspector's view, very special circumstances exist so as to justify this inappropriate development in the Green Belt.

3.2 **Dismissed the application made by Mr David Goddard for a full award of costs against the Council on grounds of 'unreasonable behaviour' –** The Inspector stated "given the number of different matters to be taken into account in the consideration of a gypsy development in the Green Belt, I do not consider that the case can be described as being one '*which should clearly be permitted';* the weight to be given to the material considerations is a matter of judgement for the decision maker. I have come to a different conclusion to that reached by the Council, in making my recommendation to the Secretary of State. However, I do not consider that it was unreasonable of the Council to take the view that they did."

3.3 **Dismissed the appeals by Mr Derek Clarke, Mr & Mrs McCarthy, Mr Jason Willis, Mr I Kirkpatrick, Mrs J M Chattaway and Mr K Clarke relating to the service of enforcement notices alleging a breach of planning control at plots 1, 2,12,13,15 and 16, at Land adjacent to Oxford Canal. Boddington Road Claydon (Delegated) -** In the Inspector's view, any reasonable person walking along the tow path on the opposite side of the canal would not regard these plots as being in agricultural use. The land no longer has an agricultural character but has a domestic character. The change of use of agricultural land to use as a private plot for mixed domestic garden and open storage has as a matter of fact and degree occurred. The appeals therefore fail.

3.4 **Allowed the appeals by Miss Rebecca Lloyd, Mr & Mrs Cox and Mr T Wallstrom relating to the service of enforcement notices alleging a breach of planning control at plots 3, 8 and 14 at Land adjacent to Oxford Canal, Boddington Road, Claydon (Delegated) - In** the Inspector's view, any reasonable person walking along the tow path on the opposite side of the canal would regard these plots to be in agricultural use. The change of use to a private plot for mixed domestic garden and open storage purposes has, as a matter of fact and degree, not occurred. The appeals therefore succeed and the enforcement notices are quashed.

3.5 **Dismissed the appeal by Mr David Thompson against the refusal of application 11/00068/F for the demolition of the existing detached garage and the erection of a detached two storey dwelling and garage workshop at r/o 8 Chestnut Close, Launton (Delegated) –** In the Inspector's view the proposal would extend built form away from the settlement towards the countryside. It would not be within the built-up area of the village and would constitute an inappropriate intensification of built form. The Inspector went onto conclude that the proposed dwelling would not sit within the built up area of Launton and that the requirement of LP saved policy H13 which seeks to restrict development to within the built up area, would not be met.

3.6 **Dismissed the appeal by Mrs M Green against the refusal of application 10/01617/F for a two storey dwelling to the side of 103 South Avenue Kidlington (Delegated)** – The Inspector concluded that the proposal would result in serious harm to the character and appearance of the surrounding residential area.

3.7 **Allowed the appeal by Basharat Hussain against the refusal of application 11/00590/F for a single storey and two storey extension to rear elevation and porch to front elevation at 92 The Fairway, Banbury (Delegated) –** The Inspector concluded that the proposal would not unacceptably detract from the living conditions of the occupiers of dwellings to the north as regards light and would not conflict with Policy C30 of the Cherwell Local Plan 1996.

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 Karen Muir, Corporate System Accountant 01295 221559

Legal: There are no additional legal implications arising for the Council from accepting this recommendation as this is a monitoring report.

Comments checked by Ross Chambers, Solicitor 01295 221690

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 Ross Chambers, Solicitor 01295 221690

Wards Affected

All

Document Information

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-	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