

**Committee:** Planning Committee  
**Date:** Thursday 8 November 2012  
**Time:** 4.00 pm  
**Venue:** Bodicote House, Bodicote, Banbury, OX15 4AA

### **Membership**

<b>Councillor Rose Stratford (Chairman)</b>	<b>Councillor Alastair Milne Home (Vice-Chairman)</b>
<b>Councillor Ken Atack</b>	<b>Councillor Fred Blackwell</b>
<b>Councillor Colin Clarke</b>	<b>Councillor Tim Emptage</b>
<b>Councillor Michael Gibbard</b>	<b>Councillor Chris Heath</b>
<b>Councillor David Hughes</b>	<b>Councillor Russell Hurle</b>
<b>Councillor Mike Kerford-Byrnes</b>	<b>Councillor James Macnamara</b>
<b>Councillor D M Pickford</b>	<b>Councillor G A Reynolds</b>
<b>Councillor Leslie F Sibley</b>	<b>Councillor Trevor Stevens</b>
<b>Councillor Lawrie Stratford</b>	

### **Substitutes**

<b>Councillor Maurice Billington</b>	<b>Councillor Surinder Dhesi</b>
<b>Councillor Mrs Diana Edwards</b>	<b>Councillor Andrew Fulljames</b>
<b>Councillor Melanie Magee</b>	<b>Councillor Kieron Mallon</b>
<b>Councillor Jon O'Neill</b>	<b>Councillor P A O'Sullivan</b>
<b>Councillor Lynn Pratt</b>	<b>Councillor Nigel Randall</b>
<b>Councillor Douglas Williamson</b>	<b>Councillor Barry Wood</b>

## **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. Requests to Address the Meeting**

The Chairman to report on any requests to address the meeting.

### **4. Urgent Business**

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

### **5. Minutes (Pages 1 - 9)**

To confirm as a correct record the Minutes of the meeting of the Committee held on 11 October 2012.

## **Planning Applications**

- |            |   |                     |
|------------|---|---------------------|
| <b>6.</b>  | <b>25 Ironstone Hollow, Hook Norton (Pages 12 - 16)</b>   | <b>12/01049/F</b>   |
| <b>7.</b>  | <b>Land at Launton Road, Bicester Oxfordshire (Pages 17 - 28)</b>                                       | <b>12/01216/F</b>   |
| <b>8.</b>  | <b>Land at Glebe Court, Stoke Lyne Road Fringford, Oxfordshire OX27 8RJ<br/>(Pages 29 - 39)</b>         | <b>12/01285/F</b>   |
| <b>9.</b>  | <b>OS Parcel 3431 Adjoining and North East of Blackthorn Road, Launton<br/>(Pages 40 - 57)</b>          | <b>12/01293/F</b>   |
| <b>10.</b> | <b>4 The Rookery, Kidlington (Pages 58 - 83)</b>  | <b>12/01321/OUT</b> |
| <b>11.</b> | <b>The Dell, 4 Ingelby Paddocks, Enslow (Pages 84 - 99)</b>   | <b>12/01328/F</b>   |
| <b>12.</b> | <b>Alkerton Quarry, Alkerton with Shenington (Pages 100 - 103)</b>                                      | <b>12/01365/CM</b>  |
| <b>13.</b> | <b>Land North West of Alkerton Oaks Business Park, Stratford Road, Shenington<br/>(Pages 104 - 108)</b> | <b>12/00960/F</b>   |
| <b>14.</b> | <b>Land to the Rear of The Old Coach House, Queens Avenue, Bicester (Pages<br/>109 - 123)</b>           | <b>12/01301/F</b>   |

## **Enforcement Action**

### **15. Quarterly Enforcement Report (Pages 124 - 134)**

Report of Head of Public Protection and Development Management

## **Summary**

To inform and update Members of the progress of outstanding formal enforcement cases and to inform Members of the overall level of activity in the Development Management service

## **Recommendations**

The Planning Committee is recommended:

- (1) To accept this report.

## **Review and Monitoring Reports**

### **16. Decisions Subject to Various Requirements (Pages 135 - 138)**

Report of Head of Public Protection and Development Management

#### **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.

### **17. Appeals Progress Report (Pages 139 - 143)**

Report of Head of Public Protection and Development Management

#### **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:

- (1) To accept the position statement.

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

## **Information about this Agenda**

### **Apologies for Absence**

Apologies for absence should be notified to

[democracy@cherwellandsouthnorthants.gov.uk](mailto:democracy@cherwellandsouthnorthants.gov.uk) or 01295 221589 / 01295 227956 prior to the start of the meeting.

### **Declarations of Interest**

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

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

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

### **Evacuation Procedure**

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

### **Access to Meetings**

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

### **Mobile Phones**

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

### **Queries Regarding this Agenda**

Please contact Natasha Clark / Aaron Hetherington, Democratic and Elections  
[natasha.clark@cherwellandsouthnorthants.gov.uk](mailto:natasha.clark@cherwellandsouthnorthants.gov.uk), 01295 221589 /  
[aaron.hetherington@cherwellandsouthnorthants.gov.uk](mailto:aaron.hetherington@cherwellandsouthnorthants.gov.uk), 01295 227956

**Sue Smith**  
**Chief Executive**

Published on Wednesday 31 October 2012

## Cherwell District Council

### Planning Committee

Minutes of a meeting of the Planning Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 11 October 2012 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 Michael Gibbard  
Councillor Chris Heath  
Councillor David Hughes  
Councillor Russell Hurle  
Councillor Mike Kerford-Byrnes  
Councillor James Macnamara  
Councillor D M Pickford  
Councillor G A Reynolds  
Councillor Leslie F Sibley  
Councillor Trevor Stevens  
Councillor Lawrie Stratford

Officers: Bob Duxbury, Development Control Team Leader  
Tracey Morrissey, Senior Planning Officer  
Ross Chambers, Solicitor  
Fiona Brown, Strategic Housing Officer (for agenda item 13)  
Natasha Clark, Team Leader, Democratic and Elections  
Aaron Hetherington, Democratic and Elections Officer

#### 77 **Declarations of Interest**

Members declared interests in the following agenda items:

##### **10. First & Second Floors, 10 - 11 Horse Fair, Banbury.**

Councillor Alastair Milne Home, Conflict of Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Colin Clarke, Conflict of Interest, as a member of Banbury Town Council which had been consulted on the application.

##### **11. Ardley Waste Management Facility, Ardley Fields Farm, Ardley.**

Councillor G A Reynolds, Conflict of Interest, as a member of Oxfordshire County Council which would determine the application and he would remain in the meeting room for the item but not vote.

Councillor Lawrie Stratford, Conflict of Interest, as a member of Oxfordshire County Council which would determine the application and he would remain in the meeting room for the item but not vote.

78 **Requests to Address the Meeting**

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

79 **Urgent Business**

There was no urgent business.

80 **Minutes**

The Minutes of the meeting held on 13 September 2012 were agreed as a correct record and signed by the Chairman.

81 **Mallards, New Street, Deddington, Banbury, Oxfordshire, OX15 0SR**

The Committee considered application 12/00711/LB for the Demolition of rear porch and derelict garden outbuildings; construction of two storey rear extension; improved access to existing parking area including covered area; fitting of satellite dish; internal alterations; replacement windows to dwelling and new roof light.

Consideration of the application had been deferred from the previous meeting of the Committee to allow for a formal site visit.

In introducing the report, the Development Control Team Leader advised Members of an email received from the applicant, which had been included in the written update, requesting that consideration of the application be deferred to allow him to address the Committee.

It was proposed by Councillor Blackwell and seconded by Councillor Pickford that the application be determined at the meeting. Members voted unanimously in favour of the motion.

Janet Macey, a neighbour, spoke in opposition to the application.

Members were satisfied with the evidence presented.

In reaching their decision, the Committee considered the officers' report, written update, presentation and presentation of the speaker.

**Resolved**

That application 12/00711/LB be approved, subject to:

- (1) The works to which this consent relates shall be begun not later than the expiration of three years beginning with the date of this consent.
- (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, schedule of works, photographs and amended drawing numbers 32.11 B 'Existing and proposed elevations, floor plans, section and site plans', 32.11B 'Proposed timber outhouse' and 32.11A 'Improved access to parking area and removal of outhouse' all received in the department on the 16 July 2012 with agent's letter of the same date.
- (3) That the external walls of the extension and the raised boundary walls to the side of the dwelling surrounding the covered parking area shall be constructed in natural ironstone which shall be laid, dressed, coursed and pointed in accordance with a sample panel (minimum 1m<sup>2</sup> in size) which shall be constructed on site to be inspected and approved in writing by the Local Planning Authority prior to the construction of the development hereby permitted.
- (4) That samples of the tiles to be used in the covering of the roof of the extension 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.
- (5) That full design details of the windows, doors (which shall be timber) and roof lights (the roof lights shall be conservation grade), including details of the elevations, glazing and a cross section at a scale of 1:20 and an indication of the colour/ finish 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.
- (6) That full design details of the roof to the covered parking area 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.
- (7) That lime mortar shall be used in the construction and/or repointing of the extension and boundary wall.
- (8) Any making good to the internal walls shall be made good using lime plaster and permanently so retained thereafter.
- (9) All new works and works of making good shall be carried out in materials and detailed to match the adjoining original fabric except where shown otherwise on the approved drawings.

**Mallards, New Street, Deddington, Banbury, Oxfordshire, OX15 0SR**

The Committee considered application 12/00732/F for the demolition of rear porch and derelict garden outbuildings; construction of two storey rear extension; improved access to existing parking area including covered area; fitting of satellite dish and new shed.

Consideration of the application had been deferred from the previous meeting of the Committee to allow for a formal site visit.

In introducing the report, the Development Control Team Leader advised Members of an email received from the applicant, which had been included in the written update, requesting that consideration of the application be deferred to allow him to address the Committee.

It was proposed by Councillor Blackwell and seconded by Councillor Pickford that the application be determined at the meeting. Members voted unanimously in favour of the motion.

Janet Macey, a neighbour, spoke in opposition to the application.

The committee was satisfied with the evidence presented.

In reaching their decision, the Committee considered the officers' report, written update, presentation and presentation of the public speaker.

**Resolved**

That application 12/00732/F be approved subject to:

- (1) 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.
- (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, schedule of works, photographs and amended drawing numbers 32.11 B 'Existing and proposed elevations, floor plans, section and site plans', 32.11B 'Proposed timber outhouse' and 32.11A 'Improved access to parking area and removal of outhouse' all received in the department on the 16 July 2012 with agent's letter of the same date.
- (3) That the external walls of the extension and the raised boundary walls to the side of the dwelling surrounding the covered parking area shall be constructed in natural ironstone which shall be laid, dressed, coursed and pointed in accordance with a sample panel (minimum 1m<sup>2</sup> in size) which shall be constructed on site to be inspected and approved in writing by the Local Planning Authority prior to the construction of the development hereby permitted.

- (4) That samples of the tiles to be used in the covering of the roof of the extension 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.
- (5) That full design details of the windows, doors (which shall be timber) and roof lights (the roof lights shall be conservation grade), including details of the elevations, glazing and a cross section at a scale of 1:20 and an indication of the colour/ finish 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.
- (6) That full design details of the roof to the covered parking area 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.
- (7) That the revised parking area shall be kept free of obstructions at all times and used only for the specified purpose.
- (8) That, notwithstanding the provisions of Classes A, B and C of Part 1, of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, no new window(s) or other openings, other than those shown on the approved plans, shall be inserted in the walls or roof of the side (north west and south east) elevations of the extension without the prior express planning consent of the Local Planning Authority.

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### **Islip Fuel Depot, Bletchington Road, Islip**

The Committee considered application 12/00776/F for the change of use of a former oil storage depot to groundwork contractors yard.

In considering the application, Members commented that the site was a green belt site and that the proposed development would be an intrusion into the green belt.

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

### **Resolved**

That application 12/00776/F be refused for the following reasons:

- (1) The principle of the proposed development does not comply with Green Belt policy and guidance. In the absence of a persuasive very special circumstances case, the development is considered to be inappropriate development in the Green Belt which will adversely affect its openness. Furthermore the development would cause significant harm to the surrounding countryside. The proposal is therefore contrary to Policies CO4, SP5 and C4 of the South East Plan 2009, saved

Policies GB1 and C7 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

- (2) In the absence of a transport statement, a statutory requirement for a development of this size, the development is likely to constitute a potential highway safety risk and therefore does not accord with Government guidance contained within the National Planning Policy Framework.
- (3) In the absence of a flood risk assessment, a statutory requirement for a development of this size, the development is likely to constitute a potential flood risk and therefore does not accord with Government guidance contained within the National Planning Policy Framework.

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### **Otmoor Lodge, Horton Hill, Horton cum Studley**

The Committee considered application 12/01000/F for the Refurbishment and alteration to hotel bar and restaurant to form public house, with shop and change of use of existing hotel facilities to form 5 no. dwellings and construction of 4 detached dwellings, garages and access.

In reaching their decision, the committee considered the officers' report, written update and presentation

#### **Resolved**

That application 12/01000/F be refused for the following reasons:

- (1) The proposal constitutes inappropriate development within the Green Belt in that the use of the land for residential purposes with associated access road and car parking for residential and public house use, will not maintain the open and rural character of the Green Belt and will conflict with the purposes of including land within it. The very special circumstances advanced do not outweigh the harm caused to the Green Belt and the proposals are therefore contrary to the National Planning Policy Framework, Policy GB1 of the adopted Cherwell Local Plan and Policies GB1 and GB1a of the Non-Statutory Cherwell Local Plan 2011 and Policies CO4 and SP5 of the South East Plan 2009.
- (2) The proposed new build element of the development by virtue of its siting, design, layout, building height and scales are considered to be out of keeping with the local vernacular and would form a conspicuous and incongruous form of development to the detriment of the character and appearance of the locality and furthermore the development as a whole, fails to demonstrate an acceptable layout that provides sufficient amenity and parking space and delivery arrangements. The development is therefore contrary to the National Planning Policy Framework and Policies C4, CC6, H4, H5, T4 and BE5 of the South East Plan 2009 and Policies C7, C8, C28 and C30 of the adopted Cherwell Local Plan and Policies D1, D3 and D5 of the Non-Statutory Cherwell Local Plan 2011.

85 **First & Second Floors,10 - 11 Horse Fair, Banbury**

The Committee considered application 12/01020/F for the conversion of existing offices into a house of multiple occupation.

In considering the application, some Members commented that the proposed development was appropriate for the site and there was a need for bed-sits in the town centre, in particular in light of the Government's welfare and housing reforms. Other Members commented that the proposal represented over development and stressed that, should the application be approved, good management would be essential.

In response to Members' comments, the Development Control Team Leader provided clarification on the proposed acceptance of lower S106 contribution levels explaining that the issue of viability was greater in the current economic climate

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

**Resolved**

That application 12/01020/F be approved, subject to:

- (a) The applicants entering into an appropriate legal agreement to the satisfaction of the District Council to secure financial 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.
  - (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, site location plan and drawing Nos. 07-07-685/PL-101, 102, 103, 104, 105.
  - (3) That full details of refuse bin storage for the units shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development, thereafter the refuse bins shall be stored at all times in accordance with the approved details other than on the day of refuse collection.

86 **Ardley Waste Management Facility, Ardley Fields Farm, Ardley**

The Committee considered application 12/01215/CM for the continuation of asbestos land-filling. Cherwell District Council was a consultee on the application which would be determined by Oxfordshire County Council.

The Committee was satisfied with the evidence presented.

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

**Resolved**

- (1) That Oxfordshire County Council be advised that Cherwell District Council raise no objection to the application subject to there being no alteration to the phasing, restoration, timescales, inputs (including traffic levels), hours of operation and employment details approved as part of 08/02472/CM as a result of the continuation of asbestos landfilling.

Councillors Lawrie Stratford and Reynolds requested that their abstention from the vote be recorded.

87 **Request for variation of the Section 106 legal agreement to the proposed development at Land South West of Orchard Close and adjoining Murcott Road, Upper Arcott - Application 10/00807/OUT**

The Committee considered a request to vary the Section 106 legal agreement in relation to the housing development at Land South West of Orchard Close and adjoining Murcott Road, Upper Arcott – Application 10/00807/OUT.

**Resolved**

- (1) That the section 106 agreement be varied in accordance with Option 2 as set out in the report.

88 **Request for a variation of the S106 Agreement relating to the proposed development at Bankside, Banbury - Application 05/01337/OUT**

The Committee considered a report which requested agreement to vary the S106 Agreement in relation to the development at Longford Park (Bankside), Banbury (application 05/01337/OUT). Consideration of the request had been deferred at the last meeting to allow answers to be provided to questions concerning the mix of housing.

The Strategic Housing Officer advised the Committee that the affordable housing mix had been negotiated in January 2012 and was set to respond to meeting future housing needs in the Cherwell district at that time.

The Committee thanked officers for the additional information.

**Resolved**

- (1) That the s106 agreement be varied to enable further progress towards the commencement of the development and delegate to officer the final approval of the precise wording of the amendments (option 2).

89 **Request for a variation of the S106 Agreement relating to the proposed development at Oak Farm, Milcombe - 1000967OUT**

The Committee considered a request for a variation of the S106 Agreement in relation to the development at Oak Farm, Milcombe – Application 10000967/OUT.

In considering the report, Members commented that Parish Councils should be consulted on S106 variation requests to ensure that any variations continued to best meet the needs of the parish.

The Development Control Team Leader confirmed that Parish Councils were consulted on S106 agreements and assured Members that procedures would be reviewed with a view to consulting parishes on variations.

**Resolved**

- (1) That the requested variations to the agreement as laid out in the report be agreed and that authority be delegated to officers on the final approval of the precise working of the amendments should this be necessary.

90 **Decisions Subject to Various Requirements**

The Committee considered a report which updated Members on decisions which were Decisions Subject to Various Requirements

**Resolved**

- (1) That the position statement be accepted.

91 **Appeals Progress Report**

The Committee considered a report which updated Members on application where new appeals had been logged, public inquiries hearings scheduled or appeals results received.

**Resolved**

- (1) That the position statement be accepted

The meeting ended at 6.00 pm

Chairman:

Date:

### PLANNING COMMITTEE

8 November 2012

### 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**

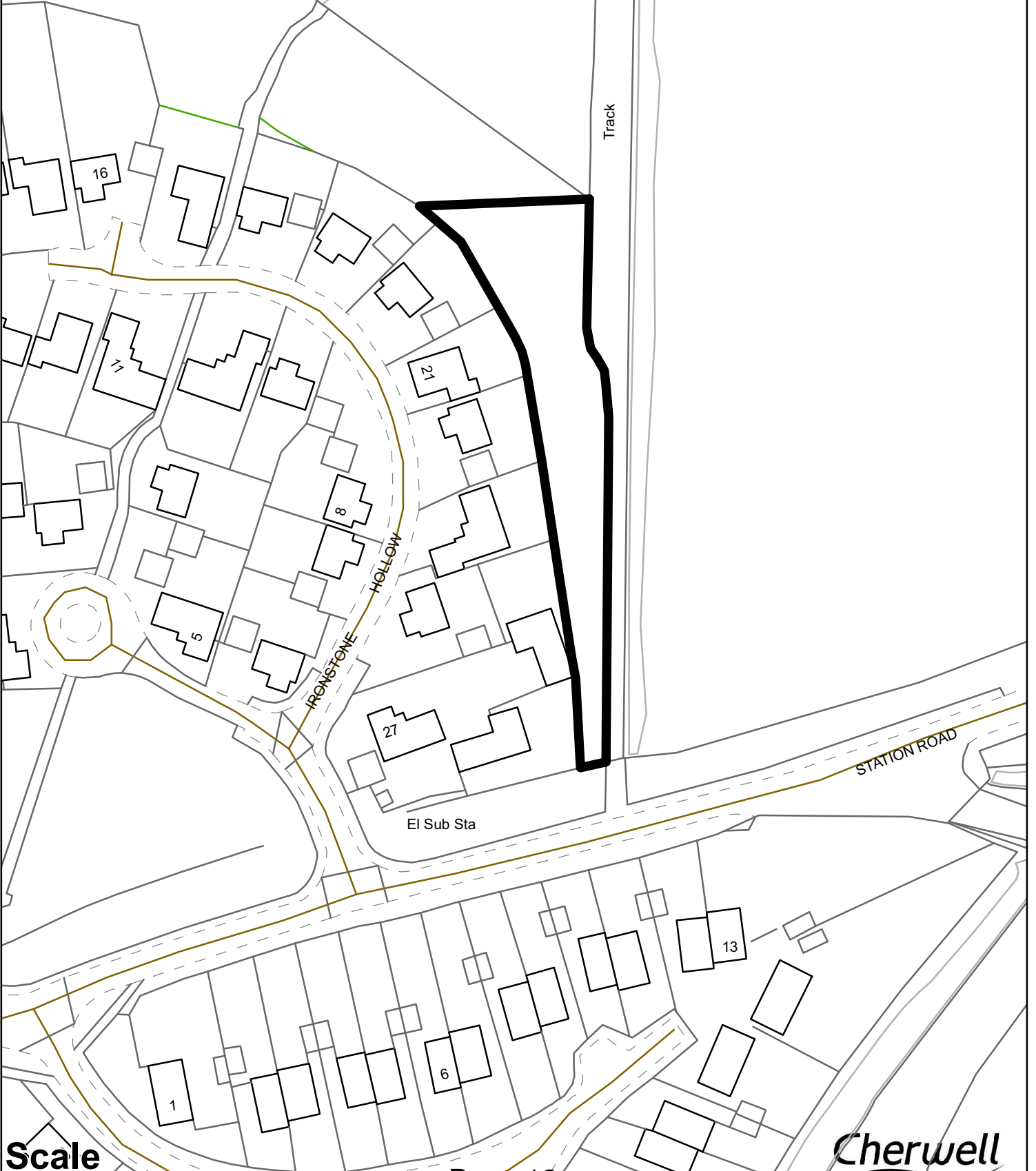
The recommendations in the reports may, if accepted, affect the human rights of individuals under Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights. However, in all the circumstances relating to the development proposals, it is concluded that the recommendations 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

	<b>Site</b>	<b>Application No.</b>	<b>Ward</b>	<b>Recommendation</b>	<b>Contact Officer</b>
6	25 Ironstone Hollow, Hook Norton	12/01049/F	Hook Norton	Approval	Simon Dean
7	Land at Launton Road, Bicester, Oxfordshire	12/01216/F	Bicester Town	Approval	Graham Wyatt
8	Land at Glebe Court, Stoke Lyne Road, Fringford, Oxfordshire OX27 8RJ	12/01285/F	Fringford	Refusal	Graham Wyatt
9	OS Parcel 3431 Adjoining and North East of Blackthorn Road, Launton	12/01293/F	Launton	Approval	Rebecca Horley
10	4 The Rookery, Kidlington	12/01321/OUT	Kidlington South	Approval	Tracey Morrissey
11	The Dell, 4 Ingelby Paddocks, Enslow	12/01328/F	Kirtlington	Refusal	Tracey Morrissey
12	Alkerton Quarry, Alkerton with Shenington	12/01365/CM	Wroxton	That Cherwell District Council raises no objections to the application	Simon Dean
13	Land North West of Alkerton Oaks Business Park, Stratford Road, Shenington	12/00960/F	Wroxton	Approval	Simon Dean
14	Land to the Rear of The Old Coach House, Queens Avenue, Bicester	12/01301/F	Bicester Town	Approval	Rebecca Horley



Scale  
1:1,000



**25 Ironstone Hollow**  
**Hook Norton**  
**Oxfordshire**  
**OX15 5NA**

**12/01049/F**

**Scale**  
**1:10,000**

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**Cherwell**

DISTRICT COUNCIL  
NORTH OXFORDSHIRE

## 25 Ironstone Hollow, Hook Norton

12/01049/F

**Ward:** Hook Norton

**District Councillor:** Cllr Irvine

**Case Officer:** Simon Dean

**Recommendation:** Approval

**Applicant:** Mr Shires

**Application Description:** Works to trees (required in accordance with Condition 8 of CHN 379.94N)

**Committee Referral:** Council interest in the land

### 1. Site Description and Proposed Development

- 1.1 The application relates to a number of trees beyond the Northern boundary of 25 Ironstone Hollow, Hook Norton. Ironstone Hollow is a small housing development, granted consent under application reference CHN 379/94. Condition 8 of that planning permission required that "*None of the trees [within the area of trees to the immediate North of the housing] shall be felled, topped, lopped or uprooted without the prior consent of the Local Planning Authority unless such tree has become dangerous...*". This condition was imposed "*in the interests of the visual amenity of the area and to ensure the creation of a pleasant environment for the development*".
- 1.2 The proposal seeks permission to undertake works to three of the trees ( two oaks and an ash), as identified in the application, in order to prevent excessive overshadowing of, and encroachment into the garden of 25 Ironstone Hollow.

### 2. Application Publicity

- 2.1 The application has been advertised by way of site notice. The final date for comment was the 20<sup>th</sup> of September 2012. No correspondence has been received as a result of this consultation process.

### 3. Consultations

- 3.1 **Hook Norton Parish Council:** objects to the application as it manages the wood and has not been approached directly by the applicant for consent to carry out this work.

#### Cherwell District Council Consultees

- 3.2 **Arboricultural Officer:** Comments will be provided at the Committee Meeting

### 4. Relevant National and Local Policy and Guidance

#### 4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)

C13: Area of High Landscape Value

C28: Layout, design and external appearance of new development

## 4.2 Other Material Policy and Guidance

National Planning Policy Framework

## 5. Appraisal

5.1 The key issues for consideration in this application are:

- Impact on the original reason for the condition

### **Impact on the original reason for the condition**

5.2 As this application is required as a result of a condition imposed upon an application for planning permission, its acceptability lies chiefly in its impact on the original reason for its imposition.

5.3 In this case, the condition was imposed in the interests of the visual amenity of the area and to ensure the creation of a pleasant environment for the development. The two oak trees are to remain, but have their crowns reduced, and the ash trees proposed to be felled. It is small and set within the larger belt of trees.

5.4 The HPPDM does not consider that the proposed tree works would cause harm to the reason for the imposition of the condition when the planning permission was first granted, but it will be noted that the comments of the Council's tree experts are awaited.

### **Conclusion**

5.5 Whilst the objections of the Parish Council in terms of their ownership or management of the woodland are noted, it is not considered that the District Council can defer further the consideration of this application whilst that issue is resolved. The condition requires the consent of the Local Planning Authority for the carrying out of works to these trees, and the application is therefore made to Cherwell District Council.

5.6 As the proposal results only in the reduction of the two larger trees, and the felling of one smaller one, the proposal does not harm the visual amenity of the area, nor does it significantly affect the pleasant nature of the context of the development.

## **6. Recommendation**

**Approval**, subject to the following conditions:

- 1 Time limit
- 2 In accordance with tree BS

### **Planning Notes**

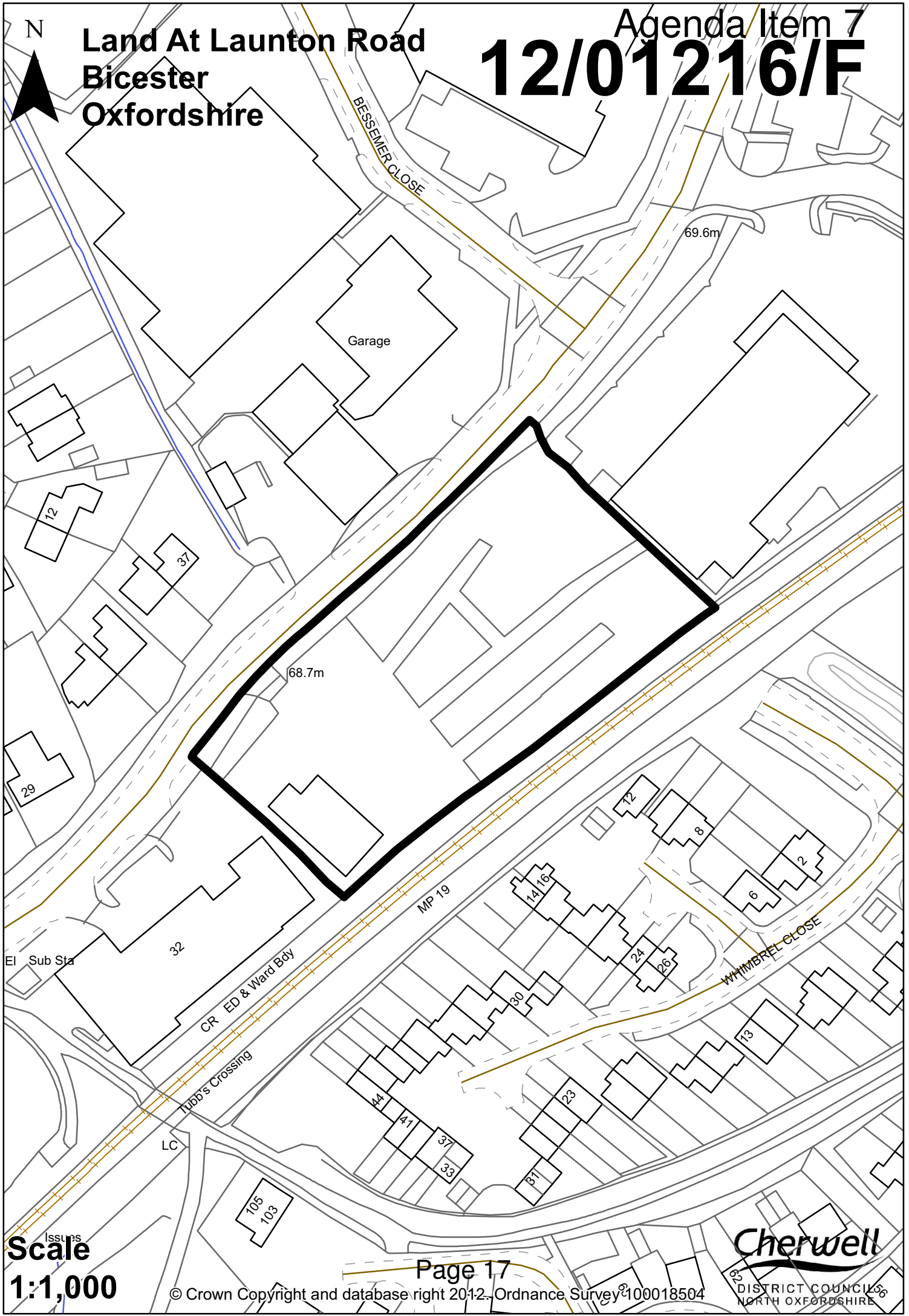
- 1 Third party rights
- 2 Protected species

**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 tree works will not harm the visual amenities of the area or harm the character of the context of the development. As such the proposal is in accordance with Policies C13 and C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework. 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.

Land At Launton Road  
Bicester  
Oxfordshire

Agenda Item 7  
**12/01216/F**



Scale  
**1:1,000**

Land At Launton Road  
Bicester  
Oxfordshire

12/01216/F

Scale  
1:10,000

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**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

# Land at Launton Road, Bicester Oxfordshire

12/01216/F

**Ward:** Bicester Town

**District Councillor:** Councillor Edwards  
and Pickford

**Case Officer:** Graham Wyatt

**Recommendation:** Approval

**Applicant:** Taylor Wimpey Oxon

**Application Description:** Erection of 23 dwellings with associated access

**Committee Referral:** Major development

## 1. Site Description and Proposed Development

- 1.1 The site forms a rectangular parcel of land sited measuring some 0.524ha sited between the recently constructed Aldi store and Child First Nursery. The site measures approximately 100m x 50m and currently contains a single building in the south western corner. The remaining land is currently given over to grass and other landscaping. Hardstanding from its previous use as a Transco depot remains on site. Mature hedging and trees exist on the front and rear boundaries (northwest and southeast). The site lies within walking distance of the town centre.
- 1.2 To the rear of the site lies a railway line that is part of the Bicester Town Station- Calvert line. Opposite the site on Launton Rd is an existing petrol filling station and Kia garage. Further commercial and industrial uses are found within Bessemer Close. Residential developments are also found along Launton Road and to the rear, across the railway line at Whimbrel Close and beyond.
- 1.3 The proposal seeks permission to clear the site and erect 23 dwellings on the land, 7 of which would be affordable units. The development proposes a mix of size and type of dwelling. The existing access would be utilised with parking and turning areas provided wholly within the site. The dwellings would all be two storey with a mixture of materials proposed. The dwellings would be arranged largely in a linear manner parallel to the front and rear of the site, with additional dwellings adjacent to Aldi and Child First.
- 1.4 The site does not lie within a Conservation Area and no listed buildings are in the vicinity. There are not other relevant site constraints.

## 2. Application Publicity

- 2.1 The application has been advertised by way of a site notice, press advertisement and neighbour notification letters. The final date for comment was the 3<sup>rd</sup> October 2012. No correspondence has been received as a result of the consultation process.

### 3. Consultations

- 3.1 **Bicester Town Council:** The Town Council strongly objects to this application on the grounds of there are already sufficient houses in the local plan and the location is more suited to commercial use as outlined in the master plan

#### **Cherwell District Council Consultees**

- 3.2 **Head of Safer Communities** – No objection regarding noise impact.
- 3.3 **Strategic Housing Officer** – The current application shows all the affordable housing in one row at the end the site. We would like to see this dispersed more so that it is in two clusters. The housing will need to comply with the HCA design and quality standards and 50% of the units will need to meet Lifetime Homes Standards. These will apply to the 3 houses for rent. We would prefer to see these units transferred to a registered provider who is a preferred development partner of Cherwell District Council and can supply a list of contacts.
- 3.4 **Environmental Protection Officer**

*I'd like to see some additional clarification / risk assessment / site investigation works in the south west corner of the site i.e. corner of the site including the southern-most point. There seems to be a discrepancy in the "Investigation of Potential Contamination Sources" section of the report (section 9.2). This states that trial pit 8 was excavated in the vicinity of R22 where an oil odour was noted in the previous investigation. The KCB report soil sample location log refers to site investigation location R26 as having an oil odour and oily / sandy groundwater seepage at 1.8mbgl. This KCB investigation location is also reported earlier in your report in section 4.1.2 as being associated with this oil odour.*

*The nearest of your investigation locations to R26 was TP2 but due to the scaling of the approximate site investigation location markers on the drawing, and the actual size of the trial pit sample locations, its not clear whether this sample location was close to KCB's sample location R26 and the absence of groundwater seepage or oil odour may indicate that it is not. As this trial pit was terminated on the limestone at 2.2 mbgl and site levels and / or depth measurements of investigation locations may not be consistent between reports, I'd like to see further clarification of this risk, supported by additional investigation in the south west corner of the site, as necessary.*

*With regard to the rest of the site, thank you for a clear and concise coverage of the site investigation and the risk assessment works to date. I can confirm that I accept the recommendations within your report that no additional assessment works are required to demonstrate the rest of the site is suitable for its proposed use with no requirement for additional remedial measures (not withstanding the comments above regarding the south west corner of the site).*

*It is recognised that additional site works may not be practical at this stage without removal of the existing building on the site.*

## **Oxfordshire County Council Consultees**

- 3.5 **Highways Liaison Officer** – No objection in principle, subject to the highway conditions and a financial contribution towards highway improvements.
- 3.6 **Developer Funding Officer** – Require financial contribution to off-set the impact of the development on local infrastructure and amenities.

## **Other Consultees**

- 3.10 **Thames Water** – No objection regarding water or waste. Suggest an informative.

## **4. Relevant National and Local Policy and Guidance**

### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan (Saved Policies)

C28: Design, layout etc standards  
C30: Design control  
H5: Affordable housing  
R12: Public open space for new developments  
ENV1: Pollution control  
ENV12: Contaminated land

South East Plan 2009

CC1: Sustainable development  
CC4: Sustainable design and construction  
CC6: Sustainable communities and character of the environment  
CC7: Infrastructure and implementation  
H5: Housing design and density  
T1: Manage and invest  
T4: Parking  
BE1: Management for an urban renaissance  
NRM10: Noise

### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

## **Appraisal**

- 5.1 The key issues for consideration in this application are:

- Policy context
- Planning history
- Principle of the development
- Highway matters
- Planning obligations
- Other matters

## Policy Context

- 5.2 In establishing the acceptability of the principle of the erection of dwellings in this location regard should be paid to Government guidance contained within the NPPF – Delivering a wide choice of high quality homes, Policy H5 of the South East Plan 2009 and saved Policies C28 and C30 of the adopted Cherwell Local Plan.
- 5.3 Government guidance requires housing applications to be considered in the context of sustainable development. Sustainable development has three dimensions: economic, social and environmental. Development should contribute to building a strong responsive and competitive economy, support strong, vibrant and healthy communities through the creation of a high quality built environment and contribute to protecting and enhancing the natural, built and historic environment.
- 5.4 Policies C28 and C30 of the Adopted Cherwell Local Plan 1996 and Policy H5 of the South East Plan 2009 seeks to raise the quality of new housing and reduce its environmental impact.

## Planning History

- 5.5 The site has been the subject of previous applications for residential development. Application 04/02756/OUT was approved on 26<sup>th</sup> May 2006 for a development comprising 35 flats with associated car parking and access. This permission has since expired. Other applications that are connected with the site relate to the area where the Aldi store has recently been erected.

## Principle of the Development

- 5.6 The proposal seeks to erect 23 dwellings on the land. Sixteen of the dwellings will be private with a further 7 units being affordable. The affordable and private units would be provided as follows:

**Affordable Rent** - 2 x 1 bed flat/maisonette, 2 x 2 bed houses and 1 x 3 bed house.

**Affordable Shared ownership** – 1 x 2 bed house and 1 x 3 bed house.

**Privately Owned** – 16 x 3 bed houses

- 5.7 The affordable units would be located on the northeast boundary with Aldi. The units would be split into two clusters forming a row of 2 and 3 bedroom houses and the maisonettes at the other end separated by two private 3 bedroom houses.
- 5.8 The development proposes 5 detached dwellings to front Launton Road with the remainder located behind forming link detached with garages between. Both brick and stone are proposed with slate and tile used for roofs. All dwellings will be two storey in height. Each unit will be provided with bin and cycle storage located within garden areas. Parking is provided for each unit with additional spaces for visitors.
- 5.9 The site lies within the built up area of Bicester and lies close to the town centre and its facilities and amenities. To the north east along Launton Road are additional facilities within retail parks where food stores, DIY stores and other

retail premises are available. Primary and secondary schools are within a short distance from the site.

- 5.10 The design of the units and the layout are considered acceptable. A landscaping scheme details both hard and soft landscaping has been submitted. The site is within a sustainable location close to facilities and amenities in the area. The development would be constructed of materials sympathetic to the area represents a proportionate and well designed addition development that would not appear unduly prominent nor detract from the character and appearance of the wider area as a whole. The proposal will not have a detrimental impact on the amenities of adjoining occupiers to an unacceptable level. Adequate amenity and parking areas would be provided for each unit.
- 5.11 The principle of the development is therefore considered acceptable as it would contribute towards a strong, vibrant and healthy community through the creation of a high quality built environment and contribute to protecting and enhancing the natural and built environment.

### **Highway Matters**

- 5.12 Oxfordshire County Council as Highway Authority have considered the proposal and comment that the development is broadly acceptable. However, concerns are raised that only 43 parking spaces are provided when 47 would be required. An amended parking scheme was therefore requested.
- 5.13 However, the site is within walking distance from the town centre and other amenities in the area. The applicant states that while providing more parking spaces would undoubtedly benefit sales, given the close proximity to town and the fact that Bicester is setting a standard with its eco-town development, the additional spaces would not be required. It is agreed that an additional 4 spaces should not be required in this instance.
- 5.14 OCC have requested a financial contribution towards off-setting the impact of the development. A developer funding contribution of £21,046 (index-linked) towards transport is requested in line with Cherwell District Council Planning Obligations SPD, via S106 Agreement.

### **Planning Obligations**

- 5.15 The County Council have considered the proposal and have requested a number of contributions to off-set the impact of the development on local infrastructure and amenities. The requested contributions relate to the following:
- Primary School - £74,789
  - Senior School - £105,595
  - Special Needs Schools - £3,108
  - Library & Stock - £4,556
  - Day Resource Centre - £4,095
  - Waste Recycling Centre - £3,500
  - Adult Learning Centre - £645
  - Museum Resource Centre - £278

- Total requested - £196,566

5.15 The requested contributions listed above and from Highways have been agreed by the applicant and instructions have been sent to our legal department with a view to securing a s106 agreement. Additional contributions of £24,963.27 towards off-site open space are sought by this Council. A further contribution of £67.50 per unit will also be required towards waste and recycling.

### **Other Matters**

5.16 The Town Council have objected to the proposal on the grounds that there are sufficient houses in the local plan and that the site is better suited to a commercial use as outlined in the Bicester Masterplan.

5.17 It is recognised that CDC currently has only a 3.2 years supply of housing land, falling far short of the 5 year supply required by the NPPF. Therefore, the district is failing to meet its requirements regarding the provision of housing and windfall sites such as this make a valuable contribution towards the districts housing figures.

5.18 The Bicester Masterplan is currently in the early stages of consultation and is not adopted policy. The weight it can be afforded is therefore limited. However, the site is not allocated as potential commercial land within the document in any event.

### **Recommendation: Approval subject to**

- a) The applicant entering into an appropriate legal agreement to the satisfaction of the District Council to secure financial contributions to infrastructure improvements as set out in paras 5.14-5.16 above;
- b) Conditions to the satisfaction of officers following liaison with the applicants but covering the main issues set out below;

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. 69-1821-001 Rev G, 69-1821-002 Rev B, 69-1821-003 Rev B, 69-1821-004 Rev B, 69-1821-005 Rev B, 69-1821-006 Rev B, 69-1821-007 Rev B, 69-1821-008 Rev B, 69-1821-A-001 Rev C, 69-1821-A-002 Rev C, 69-1821-B-001 Rev B, 69-1821-B-002 Rev B, 69-1821-C-001 Rev C, 69-1821-C-002 Rev B, 69-1821-C-003, 69-1821-C-004, 69-1821-D-001 Rev B, 69-1821-D-002 Rev B, 69-1821-E-001 Rev A, 69-1821—E-002 Rev B, 69-1821-F-001 Rev A, 69-1821-F-002 Rev A, 69-1821-GAR-001 and 69-1821-GAR-002

Reason - For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with the National Planning Policy Framework March 2012.

3. That the external walls and roof(s) of the dwellings and garages shall be constructed in accordance with the submitted details on drawing 69-1821-005 Rev B (External Finish Layout) and samples of the proposed materials shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction work.

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.

4. That prior to the occupation of the dwellings, the proposed means of access between the land and the highway shall be formed, laid out and constructed strictly in accordance with the specification of the means of access attached hereto, and that all ancillary works therein specified shall be undertaken in accordance with the said specification.

Reason - In the interests of highway safety and to comply with Government advice contained in the National Planning Policy Framework March 2012.

5. That the proposed vision splays shall be formed, laid out and constructed in accordance with detailed plans which shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the dwelling and that the land and vegetation within the splays shall not be raised or allowed to grow above a maximum height of 0.6 metres above carriageway level.

Reason - In the interests of highway safety and to comply with Government advice contained in the National Planning Policy Framework March 2012.

6. That before the development is first occupied a turning area and 43 car parking spaces shall be provided within the curtilage of the site so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway, and as such the turning area and parking spaces 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. The turning area and car parking spaces shall be retained for the parking and manoeuvring of vehicles at all times thereafter.

Reason - In the interests of highway safety, to ensure the provision of off-street car parking and to comply with Government advice in the National Planning Policy Framework March 2012 and Policy T4 of the South East Plan 2009.

7. That, before any of the dwellings are first occupied, the proposed vehicular accesses, driveways and turning areas that serve those dwellings shall be constructed, laid out, surfaced and drained in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government advice in the National Planning Policy Framework March 2012.

8. That no surface water from the development shall be discharged onto the adjoining highway, and a scheme to prevent this occurrence shall be submitted to and approved in writing by the Local Planning Authority and constructed prior to the commencement of building operations.

Reason - In the interests of highway safety and to comply with Government advice in the National Planning Policy Framework March 2012 and PPS25: Development and Flood Risk.

9. That, notwithstanding the provisions of Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, the garage(s) shown on the approved plans shall not be converted to provide additional living accommodation without the prior express planning consent of the Local Planning Authority.

Reason - To ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway in accordance with Policy T4 of the South East Plan 2009.

10. That, notwithstanding the provisions of Classes A to E (inc.) of Part 1, of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, the approved dwelling(s) shall not be extended (nor shall any structures be erected within the curtilage of the said dwelling(s) without the prior express planning consent of the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the amenities of the occupants of the adjoining dwellings in accordance with Policies C28 and C30 of the adopted Cherwell Local Plan.

11. That, notwithstanding the provisions of Classes A, B and C of Part 1, of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, no new window(s) or other openings, other than those shown on the approved plans, shall be inserted in the walls or roof of the building without the prior express planning consent of the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development in order to safeguard the amenities of the occupants of the adjoining dwellings and prevent overlooking in accordance with Policy C30 of the adopted Cherwell Local Plan.

12. That the enclosures along all boundaries and within the site shall be erected as per drawing 69-1821-004 Rev B and 69-1821-008 Rev B and such means of enclosure, in respect of those dwellings which it is intended shall be screened, shall be erected prior to the first occupation of those dwellings.

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.

13. That all planting, seeding or turfing comprised in the details of landscaping as indicated on drawing 1438 01 Rev A dated August 2012 shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner; and that any trees and shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.

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

14. A Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The CEMP shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site and shall include details of the consultation and communication to be carried out with local residents. Construction work shall thereafter be carried out in accordance with the approved CEMP.

Reason - To protect the amenities of the local residents, to avoid pollution and to comply with Policy ENV1 of the adopted Cherwell Local Plan.

15. Prior to commencement of development, details of the proposed new footway (and associated ancillary work) along Launton Road must be submitted to and approved by the Local Planning Authority. The approved footway must be constructed to the approved specification prior to first occupation of the development and maintained thereafter.

Reason - In the interests of highway safety and to comply with Government advice contained in the National Planning Policy Framework March 2012.

16. 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 in accordance with Policy CC7 of the South East Plan 2009.

17. The developer shall draw to the attention of the Local Planning Authority (LPA) the presence of any previously unsuspected contamination encountered during the development.

In the event of contamination to land and/or water being encountered, no development shall continue until a programme of investigation and/or remedial work to include methods of monitoring and certification of such work having been undertaken has been submitted to and approved in writing by the Local Planning Authority.

None of the development shall be occupied until the approved remedial works, monitoring and certification of the works have been carried out and a full validation report has been submitted to and approved in writing by the Local Planning Authority.

Reason - To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Policy ENV12 of the adopted Cherwell Local Plan.

### **PLANNING NOTES**

1. Attention is drawn to the legal agreement in the form of a Unilateral Undertaking which has been made pursuant to Section 106 of the Town and Country Planning Act 1990.
2. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.
3. The applicant is advised that the off site works will need to be constructed under a Section 278 of the Highways Act legal agreement. This agreement must be obtained from the Highway Authority before any works are carried out on any footway, carriageway, verge or other land forming part of the highway. A minimum period of 8 weeks is required to draw up the agreement following the receipt by the Highway Authority of a completed Section 278 application form.

### **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 being of a layout, scale and design appropriate in its context and will not have a detrimental effect on the neighbouring residential amenities. It will not cause harm to the visual amenities of the wider area or highway safety. Moreover, the proposal will assist the district in the delivery of affordable and market housing, and will contribute towards returning the district to having a five year housing land supply. The proposal, therefore, complies with government guidance contained in, Policies CC1, CC4, CC6, CC7, T1, T4, BE1 and NRM10 of the South East Plan 2009 and Policies ENV1, H5, R12, C28 and C30 of the adopted Cherwell Local Plan 1996. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

N

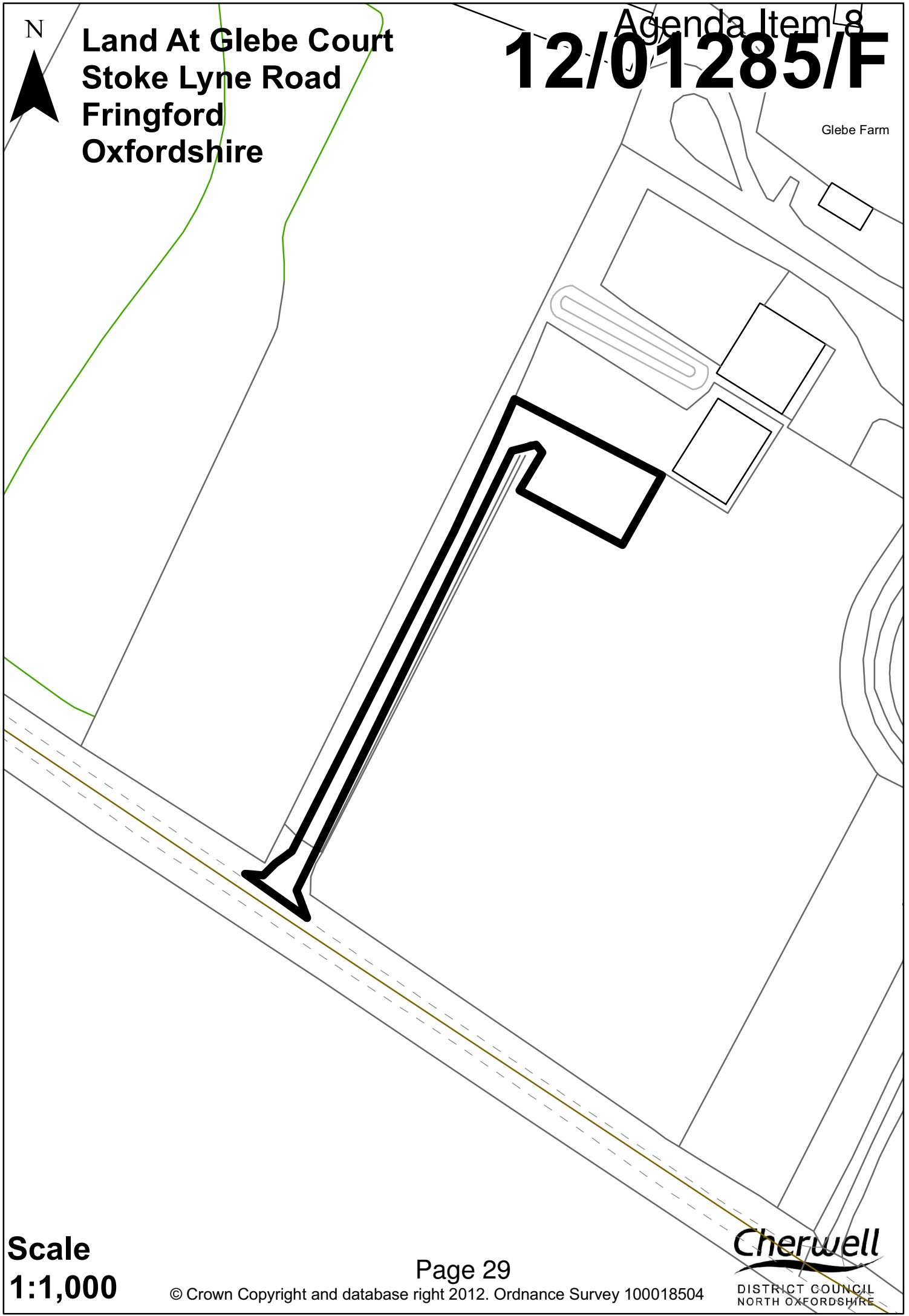


**Land At Glebe Court  
Stoke Lyne Road  
Fringford  
Oxfordshire**

Agenda Item 8

**12/01285/F**

Glebe Farm



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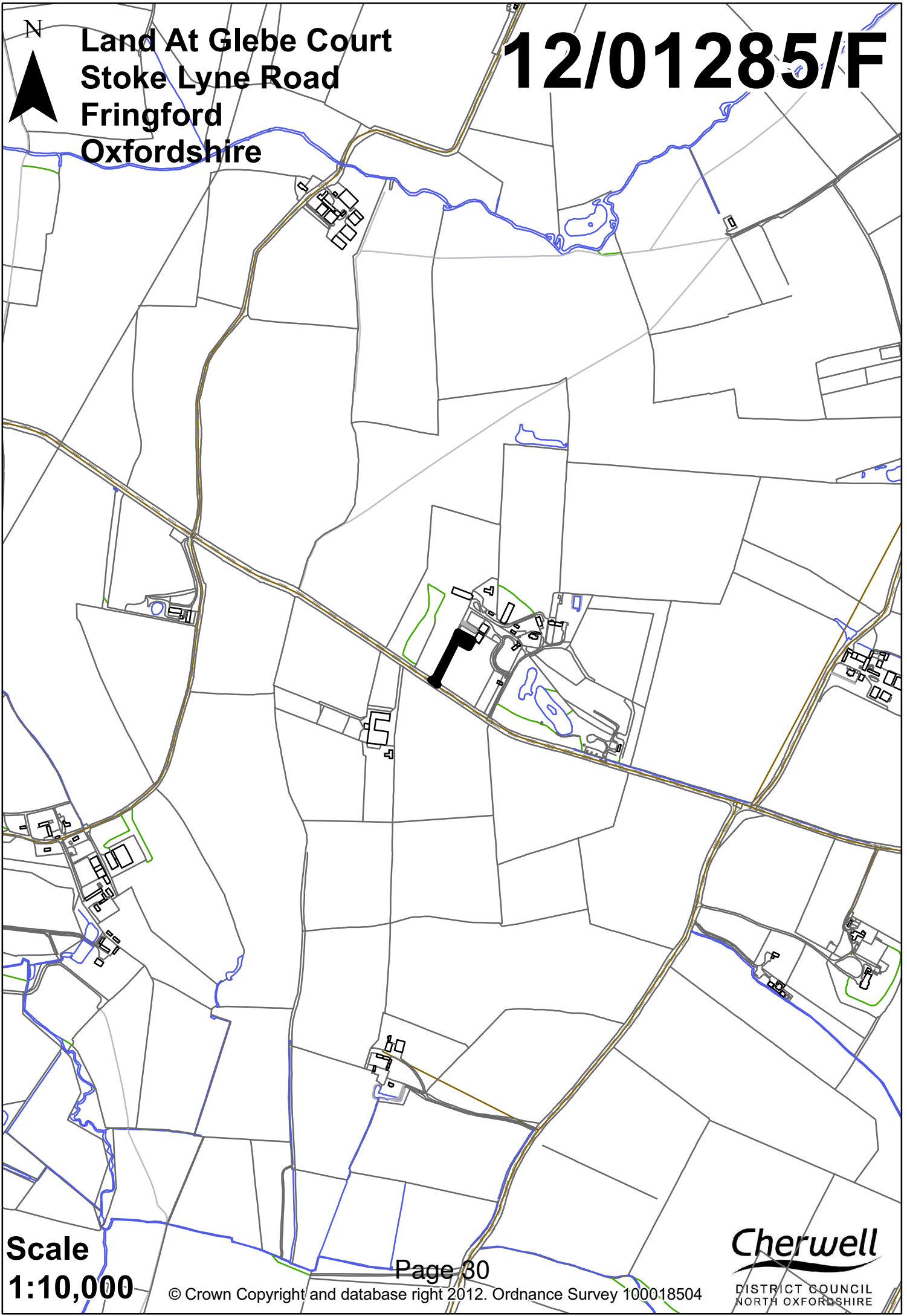
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**Land At Glebe Court  
Stoke Lyne Road  
Fringford  
Oxfordshire**

**12/01285/F**



**Scale  
1:10,000**

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***Cherwell***  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

# Land at Glebe Court, Stoke Lyne Road      12/01285/F Fringford, Oxfordshire OX27 8RJ

**Ward:** Fringford

**District Councillor:** Councillor Barry Wood

**Case Officer:** Graham Wyatt

**Recommendation:** Refusal

**Applicant:** Mr & Mrs R Herring

**Application Description:** Installation of vehicle wash facility – re-submission of 12/00382/F

**Committee Referral:** Members request

## 1. Site Description and Proposed Development

- 1.1 The site forms part of an agricultural and commercial unit on the outskirts of Fringford. The site contains two barns, one of which has an agricultural use and one which has a lawful commercial workshop use for the repair and maintenance of commercial vehicles. The applicant owns and operates the company Bicester Sweepers whom provide road sweeping services. It is not clear whether this company operates fully from Glebe Court, but their website gives an indication that this is the case. The vehicles used for the business are serviced and repaired at the site.
- 1.2 To the southwest of the agricultural barn is a hardstanding and an unauthorised bund of earth around an area adjacent to the barn. Adjacent to the bund is a clamp which the applicant states is currently used for silage.
- 1.2 The site is accessed off Stoke Lyne Road via a metalled road to the west of the site although an access to the east of the site is also available. To the south of the site are two residential properties (1 & 2 Glebe Farm Cottages) and to the east are further residential properties, one of which is occupied by the applicant.
- 1.3 The applicant seeks permission to install a vehicle washing facility at the site to be used for the washing of the applicant's agricultural vehicles, commercial vehicles brought onto the site for maintenance at the lawful workshop on site, private cars owned by the applicant, vehicles used in association with the applicants leisure facility (camping and fishing) east of the site and other commercial vehicles owned by the applicant. The wash area would be bounded by walls on three sides and a further bund to the southeast and southwest and would be sited where the existing clamp is located. The site would be laid with concrete creating a wash down area of 310 sq. m (20m x 15.5m).
- 1.4 The site lies within an Area of High Landscape Value and an enforcement notice (ENF. 1/08) restricts the use of the agricultural barn and land to the west of it for agricultural purposes only. The application site lies to the south and outside the area covered by the enforcement notice.

## **2. Application Publicity**

2.1 The application has been advertised by way of neighbour notification letters. The final date for comment was the 18<sup>th</sup> October 2012. Four letters were received to the original plans. The following Issues were raised:

- Noise and disturbance as a result of pressure washing;
- Impact on the character and appearance of the area;
- Does not comply with the terms of enforcement notice ENF.1/08;
- Inappropriate development within the countryside;
- Continued breach of planning control relating to certificate of lawfulness;
- Commercial activities on agricultural land taking place.

## **3. Consultations**

3.1 **Fringford Parish Council:** Object to the proposal for the following reason(s):

- Noise and disturbance to the surrounding neighbours of the use of industrial steam pressure washers close to the boundary of the property;
- The effect on the neighbouring properties of this noise;
- The impact on the character of the surrounding area which is a rural agricultural area not suitable for a commercial use;
- The likely precedent that approval may set for similar further inappropriate development in this rural environment.

### **Cherwell District Council Consultees**

3.2 **Head of Safer Communities** – No objection subject to a condition regarding noise from the pressure washing equipment.

### **Oxfordshire County Council Consultees**

3.3 **Highways Liaison Officer** – No objection subject to conditions

### **Other Consultees**

3.4 **Environment Agency** – We have no objections to the proposed development provided that all vehicle washing and waste storage is situated on an impermeable surface with a sealed drainage system. We recommend that the council attach a condition to this effect to ensure that the proposed development does not pose a risk of pollution to surface water quality

3.5 **Thames Water** – On the basis of information provided, Thames Water would advise that with regard to water infrastructure we would not have any objection to the above planning application. Thames Water would recommend that petrol /oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of petrol / oil interceptors could result in oil-polluted discharges entering local watercourses.

## **4. Relevant National and Local Policy and Guidance**

4.1 **Development Plan Policy**

## Adopted Cherwell Local Plan (Saved Policies)

EMP4: Employment in rural areas  
C7: Landscape conservation  
C8: Sporadic development within the countryside  
C13: Areas of High Landscape Value  
ENV1: Pollution Control  
TR10: Heavy goods vehicles

## South East Plan 2009

CC6: Sustainable Communities & Character of the Environment  
NRM10: Noise

## 4.2 Other Material Policy and Guidance

National Planning Policy Framework

### Appraisal

5.1 The key issues for consideration in this application are:

- Policy Context
- History
- Noise and disturbance
- Impact on the character and appearance of the area
- Supporting a prosperous rural economy and sustainability

5.2 The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having 3 dimensions: economic, social and environmental. Also at the heart of the NPPF is a presumption in favour of sustainable development and in the context of this application would include promoting sustainable transport, the promotion of healthy communities and the conservation and enhancement of the natural environment.

5.3 Policy EMP4 of the Adopted Cherwell Local Plan 1996 states that proposals for new employment generating development of the following types will normally be permitted:

- (A) Within an existing acceptable employment site, including redevelopment;
- (B) Conversion of an existing building or group of buildings;
- (C) Within, or adjoining settlements, for a minor extension to an existing acceptable employment site.

Provided that, the proposal and any associated employment activities can be carried on without undue detriment to the appearance and character of rural landscape and without harming the amenities of settlements or the special character and interest of a building or architectural or historic significance.

- 5.4 The NPPF also recognises the importance of a prosperous rural economy and states at paragraph 28 that planning policies should support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings.

### **History**

- 5.5 The site and surrounding land within the ownership of the applicant have been the subject of a number of planning applications and enforcement action. The planning history for the site is a material consideration and is relevant to the determination of this application. Notable applications are the previous attempts to secure vehicle washing facilities at the site and a certificate of lawfulness approved for the commercial use of the northern barn. Enforcement notice ENF.1/08 is also material to the determination of this application.
- 5.6 The barn adjacent to the clamp was granted permission under application 05/02247/AGN for a 'general purpose agricultural building'. The building was approved in 2006 using an agricultural notification, rather than a planning application, as the building was considered reasonably necessary for the purposes of agriculture.
- 5.7 Following the approval of the agricultural notification it came to the attention of the Local Planning Authority that the building was being used for commercial purposes instead of the agricultural use approved. As a result, enforcement notice ENF.01/08 was served on the site in March 2008. The notice was issued as it was considered that the change of use caused harm to residential amenity. The matter which constituted a breach of planning control was 'the change of use of the land and the barn from agriculture to the use for the parking, repairing and servicing of commercial vehicles'. No appeal against the notice was made so the notice came into effect on the 16<sup>th</sup> April 2008 and remains on the land and is effective. The area covered by the notice is the access, the barn and hardstanding immediately to the west/southwest of the barn. The enforcement notice specifically requires the applicant to,
- 1) Stop using the land and the barn on the land for the parking, repairing and servicing of commercial vehicles.
  - 2) Remove all commercial vehicles from the land.
- 5.8 On passing the site on 23<sup>rd</sup> October 2012, it was noted that commercial vehicles were parked on the site. In addition, trailers used in connection with the applicants traction engine hobby were seen on the land to the south of the unlawful bund. Moreover, the photograph of the site within the applicants Design and Access Statement clearly shows commercial HGV trailers parked behind the existing clamp, on agricultural land. None of these vehicles are used in connection with lawful agricultural use of the land.
- 5.9 Evidence is also being provided that vehicles belonging to Bicester Sweepers are being parked and washed on the land. All of these matters have been referred to the enforcement team to instigate formal proceedings against the applicant for failing to comply with the terms of the enforcement notice and to consider issuing a further notice for the change of use of the land to the south of the bund. While this matter is not for consideration as part of the determination of the current application, it does give an indication that the use of the site for commercial purposes has been deemed inappropriate at this

location and the increase in activities is having a detrimental impact on the occupiers of adjacent properties..

- 5.10 The applicant sought to regularise some of the matters in 2008 with the submission of application 08/02142/F for the construction of a vehicle and plant washing area including hardstanding for parking of plant and equipment, interceptor and associated drainage. This application was refused permission on 25<sup>th</sup> March 2009 for three reasons relating to impact on residential amenity, unsustainable location and impact on the character and appearance of the area. No appeal against this decision was made.
- 5.11 The barn to the north (rear) of the application site was granted a certificate of lawfulness for the repair and servicing of commercial vehicles under application 10/00460/CLUE. The certificate restricts the operation of the building to 0700 – 1800 Monday to Friday, 0700 – 1300 Saturday and no working Sunday or bank holidays. The current lawful commercial activities at the site is therefore relatively low key as the certificate also restricts the repair/maintenance of plant/road sweepers to no more that 8 vehicles per fortnight. However, evidence is being provided that the applicant constantly breaches the terms of the certificate both in vehicles numbers being repaired or serviced at the site and the hours of operation. It was recently reported that commercial vehicles have been entering the site at 2000hrs and both barns were being used for servicing of Bicester Sweeper vehicles. It was also reported that HGV's were seen leaving the site at 0035hrs and 0050hrs. Again, these matters are being considered by the enforcement team.
- 5.12 Earlier this year the applicant sought consent for the change of use of land from agricultural to the parking of commercial and agricultural vehicles, change of use of an agricultural building to mixed commercial and agricultural use, installation of a temporary storage and dewatering facility for wet street sweepings and a commercial vehicle washing facility .The applicant stated that the purpose of this application (12/00382/F) was for 'an extension to an existing, lawful use rather than a new, isolated commercial use in the countryside.' and continued by stating that the 'development proposal is therefore to be considered as an expansion of vehicle maintenance and repair facilities, the use of adjacent land for a commercial vehicle washing area and temporary storage of street sweepings, and an adjacent area of hardstanding for parking associated with commercial vehicle maintenance, wash down and the unloading of street sweepings'. Therefore, the proposal was essentially for the creation of a depot whereby vehicles used for Bicester Sweepers Ltd. are repaired, maintained, washed down, emptied and parked overnight. This application was refused permission for 3 reasons relating to impact on residential amenity, unsustainable location and impact on the character and appearance of the area. No appeal against this decision was made.

0050

### **The Current Application**

- 5.13 The current application seeks permission for a vehicle wash facility on land to the southwest of the agricultural barn where an existing silage clamp is located and bounded by the unlawful bund. The site lies to the south of the area covered by the enforcement notice ENF.1/08 and not within it.

- 5.14 The applicant states that vehicle wash facility is required to “establish an environmentally sustainable vehicle washing facility at Glebe Court for the washing of:
- i. vehicles used for agricultural purposes;
  - ii. vehicles used in association with the leisure facility;
  - iii. commercial vehicles brought to Glebe Court for repair and maintenance; and
  - iv. private cars.
- 5.15 The applicant has described the various activities undertaken at the site such as hedge trimming, ditch work, grass cutting and the washing of commercial sweeper vehicles. The application as states that, “other commercial vehicles in the ownership of the Applicants require periodic cleaning.” The applicant would also was their own private vehicles.
- 5.16 The vehicle wash area would be site to the southwest of the agricultural barn, where an existing silage clamp is sited. The wash area would measure 20m x 15.5m providing 310 sq. m of concrete hardstanding. The hardstanding would be angled so that water collects in a central drain area to be re-used. Plant necessary for the recycling and recirculation of clean water will be installed in the wash area. The site would be screened by the existing unlawful bund although this application does not seek permission for the retention of the bund.
- 5.17 As stated earlier, the applicant has a lawful use of the barn to the north for commercial repairs and maintenance of vehicles. The area covered by the certificate includes the apron to the front of the barn but does not extend to, or include any land associated with this application or land the subject of the enforcement notice. Again, it should also be noted that the certificate only allows the repair or maintenance of 8 vehicles per fortnight and restricts the hours of operation to 0700 – 1800 Monday to Friday, 0700 – 1300 Saturday and no working Sunday or bank holidays.
- 5.18 The applicant has failed to provide any information relating to the type and number of agricultural vehicles to be used at the site, the holding, the leisure facility, or other commercial vehicles in the ownership of the applicant. The applicant has not applied for a limited or controlled use of the wash facility but does state that there will be “no change in the number of vehicles using the track or accessing the site as a result of the proposals.”(paragraph 4.17 of Design and Access Statement).
- 5.19 Therefore, only eight commercial vehicles, some unidentified agricultural vehicles, private cars and other commercial vehicles in the ownership of the applicant should use the facility. Give the size of the facility at 20m x 15.5m, this does appear to be rather excessive for such limited use. Moreover, the application would allow unencumbered use of the site for commercial use.
- 5.20 The previous application (12/00382/F) stated that 18 vehicles per week would visit the site along with tar tankers and HGV's. This would be in direct conflict with the terms of the certificate of lawfulness and potentially the enforcement notice which prohibits the use of the access by commercial vehicles.

### **Access and highway safety**

- 5.21 OCC Highways have commented that they have no objection in principle to the development subject to the proposed vehicle wash facility being used only for vehicles associated with the existing/ancillary permitted uses of the adjacent site. The vehicle wash facility must not be offered as a separate commercial service. The applicant has confirmed that the use of the facility will be for his own commercial, agricultural and private vehicles only.

### **Impact on residential amenity**

- 5.22 The Anti-Social Behaviour Manager has commented that the site has been the subject of investigations which has revealed noise nuisance from the site. Although the noise from the site does not amount to a statutory nuisance it is clear that the existing commercial uses cause harm to the amenities of neighbouring properties through noise and disturbance caused by vehicles and their repair/maintenance. It is also evident that the increased use of the site, contrary to the terms of the certificate of lawfulness, also impacts on the amenities of adjoining occupiers
- 5.23 Policy ENV1 of the Adopted Cherwell Local Plan 1996 states that developments which is likely to cause materially detrimental levels of noise, vibration, smell, smoke, fumes or other types of environmental pollution will not be accepted.
- 5.24 The NPPF supports this stance and advises that one of its core principles is to ensure that a good standard of amenity for all existing and future occupants of land and buildings is provided. Moreover, it also states that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. Therefore, policy ENV1 of the Adopted Cherwell Local Plan 1996 is entirely consistent with the advice within the NPPF.
- 5.25 The lawful commercial site generates eight vehicle movements per week. However, it is intended to utilise the wash facility for all commercial, agricultural private and other commercial vehicles in the ownership of the applicant . There is no indication of how many vehicle movements this would generate. Nor is there any information how many vehicles are likely to visit the site.
- 5.26 The use of the lawful building to the rear has been the subject of investigations by the Anti Social Behaviour Manager, although he confirms that the noise witnessed does not amount to a statutory nuisance. Concerns are raised over the applicant's failure to comply with time restrictions and vehicle numbers at the site. The increase in vehicle numbers and commercial activities would generate further noise and disturbance that would be harmful to the amenities of other occupiers close to the site. Moreover, once a permission is granted there would be little control over the amount of vehicles that could visit the site for to use the facility. A condition restricting the number of vehicles being maintained at the site could be considered. However, this would not address the matter of noise and disturbance from the number of vehicles currently proposed and the noise from the additional commercial activities.
- 5.27 While no information on the likely levels of noise potentially generated by the development have been provided, it is considered that the use of the site for

the proposed commercial purposes would be likely to have a detrimental impact on the amenities of adjoining occupiers a Glebe Farm Cottages. It is accepted that the lawful agricultural use of the site could give rise to noise. However, these are accepted forms of disturbance one would expect living in the countryside. The potential, increased use of the access by commercial vehicles and the noise from the washer and general commercial activities at the scale proposed are not conducive to a rural location are not considered to be an acceptable intrusion. Moreover, commercial uses are normally located away from existing residential areas for the reason they can be very intrusive.

#### **Impact on the character and appearance of the area.**

- 5.28 It is considered that commercial use of the site for washing vehicles would have a detrimental impact on the character and appearance of the area. Saved policy C7 of the Adopted Cherwell Local Plan 1996 states that, 'development will not normally be permitted if it would cause demonstrable harm to the topography and character of the landscape.' The NPPF reaffirms the need to protect the countryside by stating at paragraph 109 that, 'The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes...' such as the Area of High Value Landscape the site is set within.
- 5.29 The impact of the development on the rural character of the area needs to be taken into consideration. The existing site formed an open parcel of land with agricultural barns located within it. The bund, hardstanding and current parking of commercial vehicles are unauthorised. The bunding and vehicles are clearly visible from the main road and represent a discordant feature in the landscape. The creation of a depot at the site for the repair, maintenance, wash down, emptying and parking overnight of commercial vehicles will dramatically alter the character of the area to the detriment of the visual amenities.

#### **Supporting a prosperous rural economy and sustainability**

- 5.30 The NPPF states that planning policies should support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings and promote the development and diversification of agricultural and other land-based rural businesses.
- 5.31 Policy EMP4 of the Adopted Cherwell Local Plan 1996 also recognises the importance of a prosperous rural economy but also recognises the impact rural based enterprises can have on residential amenity (see paragraph 5.4 above).
- 5.32 With this in mind, it is necessary to balance the support given to rural based enterprises and the potential impact it would have on the amenities of adjoining occupiers. In this case, it is clear that the expansion of the commercial enterprise into the site and barn would have an unacceptable impact on neighbour amenity through noise and disturbance for the reasons rehearsed above.

#### **Conclusion**

- 5.33 The site has a complex planning history which has spanned several years. The applicant has secured the lawful use of a building for limited commercial

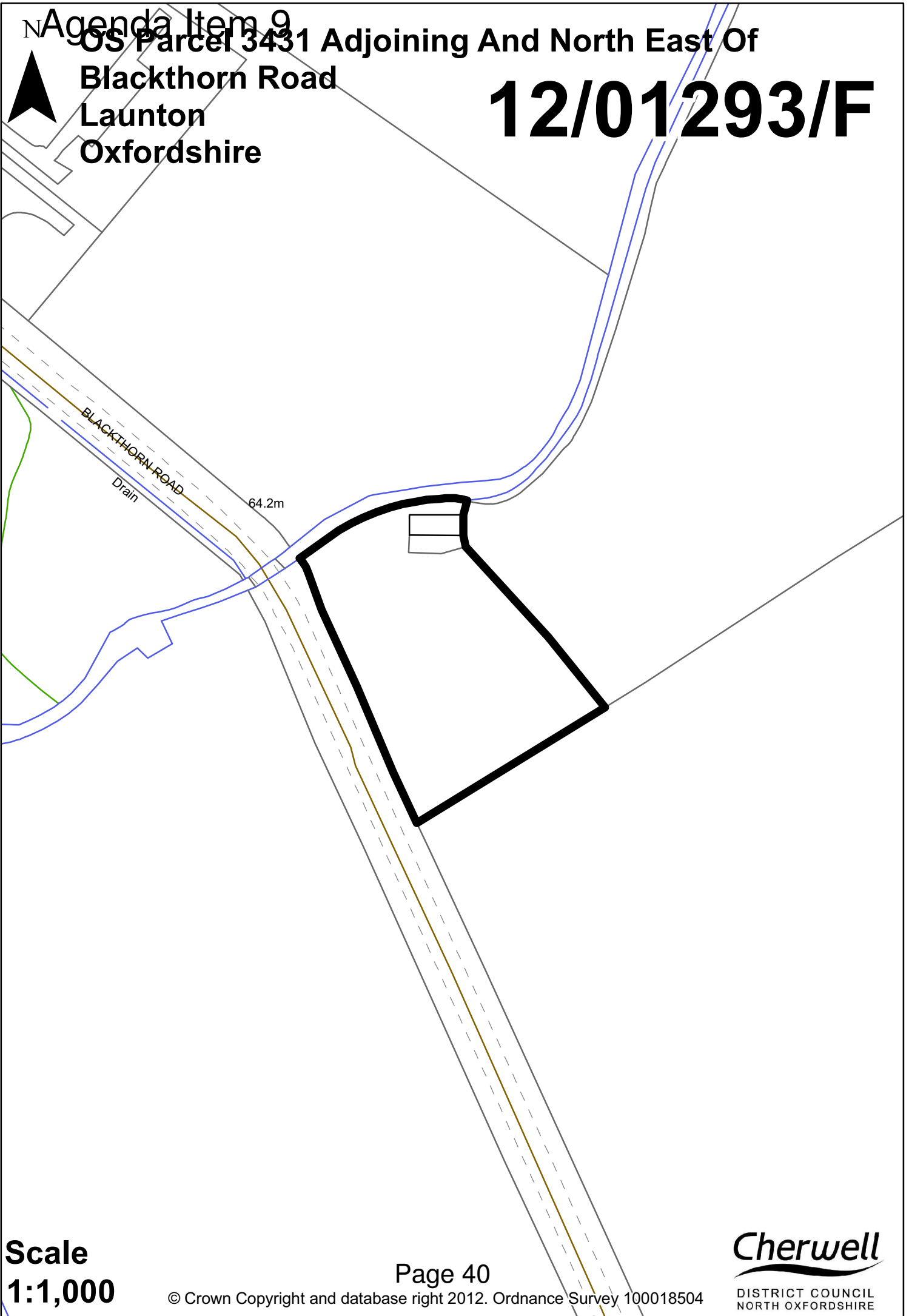
uses and it is clear that this use already impacts on the amenities of adjoining occupiers. The proposal to extend the commercial activities and increase vehicle numbers visiting the site would increase the harm on living conditions for neighbouring properties and would have an unacceptable impact on the amenities currently afforded through increased noise and disturbance.

- 5.34 It is accepted that the NPPF and local plan policies are generally supportive of rural based enterprises where it would support the rural economy. However, this has to be balanced and assessed against the impact the enterprise would have on the amenities of adjoining occupiers. In this particular case, the creation of a vehicle wash facility would harm the amenities of adjoining occupiers and should be resisted.

## **5. Recommendation**

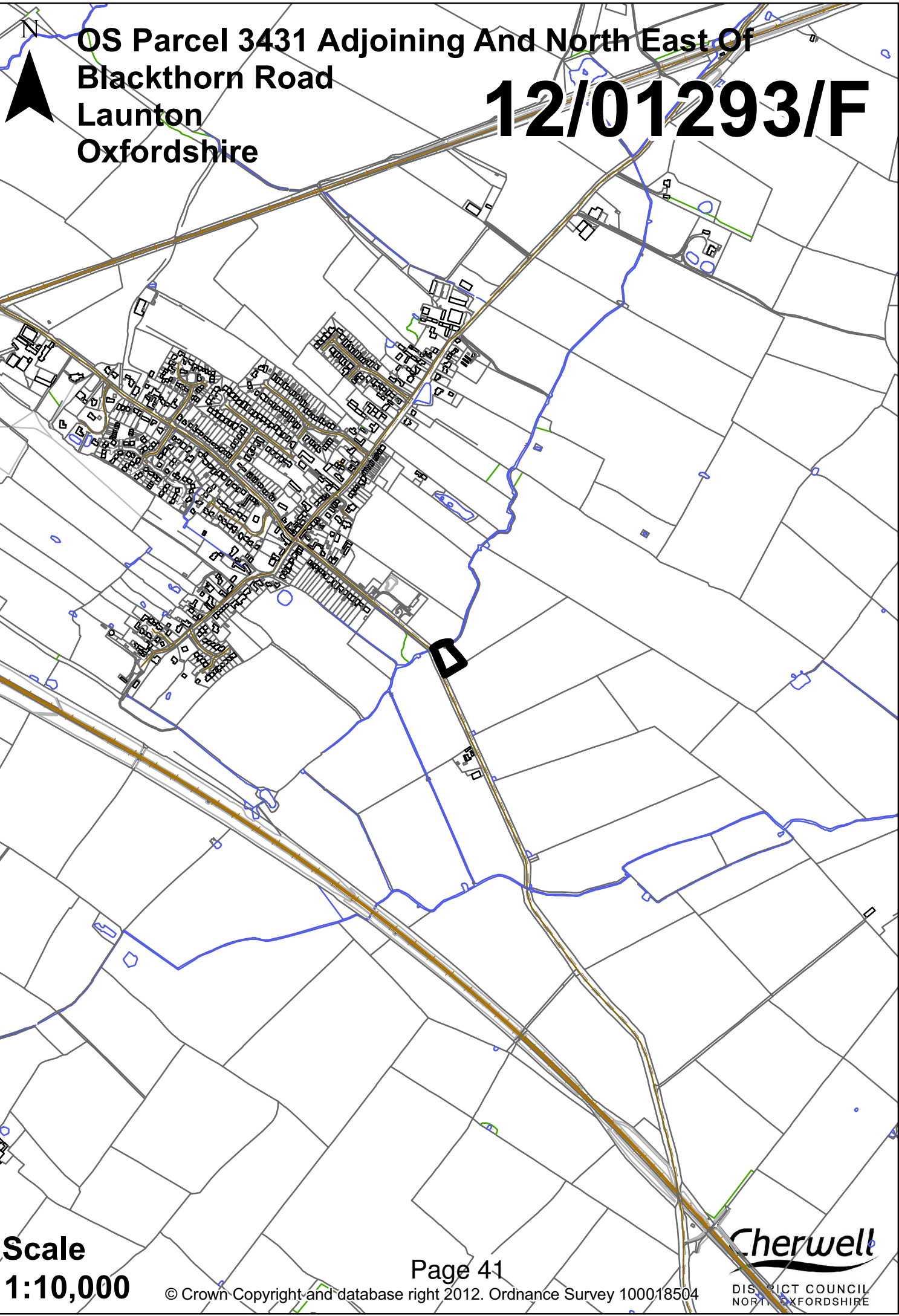
**Refusal**, for the following reason(s);

1. The proposed use would have a detrimental impact on the amenities of adjoining residential occupiers through unacceptable levels of noise and disturbance contrary to the advice within the National Planning Policy Framework March 2012, policy ENV1 and TR10 of the Adopted Cherwell Local Plan 1996 and policy NRM10 of the South East Plan 2009.
2. The proposal will result in a substantial change in the character and appearance of the open countryside which contributes to the rural setting of Fringford and will lead to an unacceptable erosion of the rural character of this part of the countryside contrary to the advice within the National Planning Policy Framework March 2012, saved policy C7, C8 and C13 of the adopted Cherwell Local Plan and policy CC6 of the South East Plan 2009



OS Parcel 3431 Adjoining And North East Of  
Blackthorn Road  
Launton  
Oxfordshire

**12/01293/F**



**Scale**  
**1:10,000**

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**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

# OS Parcel 3431 Adjoining and North East of Blackthorn Road, Launton 12/01293/F

Ward: Launton

District Councillor: Cllr David Hughes

Case Officer: Rebecca Horley

Recommendation: Approval

Applicant: Mr & Mrs Gerry & Kathleen Connors c/o agent

**Application Description:** Change of use of land to a private gypsy and traveller caravan site comprising 2 No. pitches, each pitch accommodating 1 No. mobile home, 1 No. touring caravan, 1 No. dayroom and associated hardstanding, retention of existing stable and septic tank – re-submission of 12/00287/F.

**Committee Referral:** Public interest

## 1. Site Description and Proposed Development

- 1.1 The site is located outside and to the south east of Launton village just beyond the sewage works and south of the brook on the east side of Blackthorn Road. The site has a 60 metre boundary alongside Blackthorn Road which is marked by an uncharacteristic 2m high close boarded fence situated behind the mature hedge which faces the road. There is also a wooden gated entrance on this boundary. The north and south boundaries are similarly identified but the eastern boundary is marked by just the close boarded fence with a gate which leads to open pasture land and countryside beyond. That land is identified as being under the same ownership and features a small shed situated on the east side of this fence behind the existing shed.
- 1.2 The application site extends to 0.5 hectares and is broadly rectangular and quite flat. It is part laid to tarmac but mostly scrub land featuring a centrally located burnt out building and a corrugated tin shed in the north east corner. Due to the site history, it is considered to be equestrian land and it has no notable site constraints save for its proximity to the brook and its consequential propensity to flood.
- 1.3 The application seeks full planning permission for the site to be used as a private gypsy and traveller site which would involve 2 pitches. Each pitch would accommodate 1 No. mobile home, 1 No. touring caravan and a dayroom. The dayrooms are proposed to have a 5m x 6m footprint, constructed of brick and clay tiles and stand to a height of 4m (2.35m to eaves). The submission did not include details of the mobile homes. The proposal includes associated hardstanding and a septic tank. The application seeks also to retain the existing stable/shed and the planning history for this would suggest that it has been in place for over 4 years.
- 1.4 The planning history to the site further reveals that retrospective planning permission was granted under reference 08/00039/F for the erection of a double stable (with hardstanding), new close boarded fence and gate to existing field and a change of use of the land for the keeping of horses. The equestrian use of the land would appear to have been abandoned with the new stable having been burnt down but the fence and hardstanding remain. The

shed in the corner remains but is not a substantial structure being put together with corrugated sheeting. The applicant refers to this as a stable.

- 1.5 Members may recall the previous similar application 12/00287/F which was refused, following committee resolution in May 2012, on grounds of flood risk as recommended by the Environment Agency.

## **2. Application Publicity**

- 2.1 The application has been advertised by way of a site notice placed on the gate post at the site on 26 September. A press notice was also published on 27 September. The final date for comment on this application was 18 October 2012.
- 2.2 To date 7 letters/emails of representation has been received objecting to the proposal. Full details are available electronically via the Council's website.

The material planning considerations raised as objections are as follows:

- The application amounts to a permanent residential use
- The entrance too the field is very close to a sharp bend which is hazardous
- The proposal would lead to further development on the outskirts of the village
- The site is prone to flooding and surface water will back into the village.
- The development would be outside the village boundary
- Previous cases seeking to extend the village boundary in this direction have been consistency refused even at appeal.
- The vision splay at the access is unlikely to meet highway department regs and this would be detrimental to the safety and convenience of other highway users including horse riders along the main road.
- The road is very busy and vehicles turning into the site will not be seen. Particularly hazardous for towed caravans.
- The land should be kept for agricultural purposes.
- There is an existing site adjacent to the A41 about 5 miles away so there is no need for this development. There are also sites at Bicester, Ambrosden, Arncott, Wendlebury and Bloxham.
- The site is not designated for a gypsy site in the local plan
- The site has no history of travellers
- There are no pavements or street lights near the site
- There is nothing to suggest that there would be any integrated co-existence between the site and the local community
- Government guidelines state that approval for gypsy sites should be avoided where the site is inappropriate for ordinary residential dwellings except in exceptional circumstances but there are none.
- The site would not be safe for children and animals
- Because of the tight entrance, turning left into the site would require movement onto the opposite side of the road which is dangerous.
- The document by Oxfordshire Consultants for Social Inclusion 2006 shows from 2001 census that there is no caravan or other mobile or temp

accommodation in the village suggesting that the village has no facilities in place for such dwelling.

- The site is ecologically sensitive with GCNs, kestrel, red kites, wild orchids and rare flowers.
- The corrugated iron shed cannot be described as a stable
- The septic tank may well be a pumped watercourse.
- The Yew Tree Farm development has already put enough pressure on the village in terms of increased households
- Loss of open countryside and green space.
- This is not a brown field site
- Refuse lorries would have to park on the main road by the entrance and this would be very unsafe by the bend
- The decision should not be made until the outcome of the Council's study regarding need for gypsy and traveller sites.

One letter of support was received on the previous application from Bisham Village in Marlow, Bucks. This is a character reference for the applicants from a priest who has known them for 15 years. He has confirmed the family's links to Oxfordshire.

### **3. Consultations**

#### **3.1 Launton Parish Council: Object to the proposal**

1. Road Safety – before the previous application on the site was considered, the Parish Council corresponded with the OCC Highway Authority. In particular, it raised concerns over the risk posed by slow moving, large vehicles turning into the site from the east, and the hazard they posed to traffic leaving Launton Village, which is accelerating out of the restricted speed limit area.

As stated previously, a traffic survey conducted by the Parish Council over a full week in November 2011, demonstrated that 32% of vehicles leaving the village on Blackthorn Road were exceeding the 30mph limit before they leave the restricted speed zone, and the maximum speed recorded within the restricted area was 59mph.

The Highways Senior Engineer – Transport who replied to these concerns stated 'With regard to your concern of vehicles approaching at 50mph, stopping distance is 53metres (Highway Code) and without any trimming or cutting back of vegetation visibility lines of nearly 80m were available at the time of inspection.'

Whilst the entrance may be visible from 80metres, the distance at which the driver of an approaching vehicle would see a vehicle on the other side of the road, turning into the site would be significantly less with correspondingly reduced time to react accordingly.

In November 2011 the Parish Council recorded a maximum movement rate of 197 vehicles per hour leaving the village and passing the site entrance. The Parish Council would point out, as it has to the Highways engineer, that 53metres is the stopping distance in fair weather conditions. The Highway Code recommends allowing 2 times that distance in wet weather and ten times the distance in icy conditions. (paras 202 & 205). Blackthorn Road at the site location is shaded by high hedges and trees on both sides, is slow to dry and prone to frosty conditions until late in the mornings of winter days.

At the committee hearing of the previous application Cllr D Hughes called for a site visit to inspect the access to the site and the Parish Council would

endorse such a visit preferably between 08.00 and 09.00 on a wet weekday morning.

2. Need – At the Planning Committee hearing of the previous application (12/00287/F) Cherwell DC's officer pointed out that the Council did not, at that time, have a current assessment of need and that work was needed to rectify this shortcoming. The Parish Council believes, in light of the uncertainty regarding need, that the current application should not be approved until the planning authority has adequate data to judge the requirement, especially in light of the issues stated above concerning road safety.
3. Flood Risk – a resident of Launton has pointed out to the Parish Council the fact that whilst mobile homes will have a floor level 750mm above ground no such provision has been made for the day rooms.

After hearing representations from members of the public, the Parish Council also consider that all of the objections made to the previous application on the site, (application no.12/00287/F), remain equally valid to this application and are recorded below:

- **The application is in a location that is beyond the built up limits of the village settlement.** It proposes the construction of two permanent structures (day rooms) and in addition, two constructions annotated on the plans as mobile homes. The planning documents do not define the nature of the mobile homes but the plans have a space 12.2m x 6.1m allocated to each of them, so it is assumed they are permanent structures, in addition to the day rooms.
- **An application to build a private residence on the village boundary was rejected for the same reason in January last year,** the refusal notice stating that it was beyond the built up limits of the settlement and it would detract from the open, spacious and rural character of the area.
- **The PC believes that entrance and egress from the site would represent a significant road safety hazard.** The entrance to the site is at a bend in the road and is invisible to vehicles leaving the village (Picture references are available to view online). A recent traffic survey conducted by the Parish Council over a full week in November 2011, demonstrated that 32% of vehicles leaving the village on Blackthorn Road were exceeding the 30mph speed limit before they leave the restricted speed zone, and the maximum speed recorded was 59mph.
- **The application is contrary to the Dept. of Communities and Local Government's Planning Policy for Traveller Sites (March 2012), Policy H, Para 23** which states that Local Planning Authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.
- **Significant parts of the field are in the flood plain**
- **There is no history of usage of the site for anything other than agricultural or equine purposes.** Most of the site is pasture, as is the field beyond, and whilst there is a corrugated iron structure on the site, the stable which had been erected was destroyed by fire some time ago, and there was no recollection of horses having been kept there in recent times (see Pics).
- **There is a potential issue concerning the safe disposal of waste water in the immediate vicinity of an open water course** The nature of the tank described in the application as a septic tank was called into question (see Pic), with a member of the public stating his belief that it was, in fact, part of a

flood alleviation scheme in use when there was a pumping station on adjacent land.

- **There is no perceived shortage of sites or pitches in the vicinity.**

### **Cherwell District Council Consultees**

#### **3.2 Head of Strategic Planning and the Economy (Planning Policy):**

The Government's 'Planning Policy for Traveller Sites' should be considered in the determination of this application. Appropriate regard should also be given to proposed policy BSC6 of the Proposed Submission Local Plan (August 2012) which, although carrying limited weight, does suggest a criteria based approach for the identification of traveller sites.

At the present time the district has a total of 70 authorised pitches including the 8 approved on appeal (10/00839/F) near Islip, the 3 pitches off Woodstock Road, Yarnton that were granted permission on 16 February 2012 for a temporary period of 3 years (11/01356/F), and the extra 16 pitches permitted (11/01863/F) at Milton Road, Bloxham on 24 February 2012 (20 pitches were already accounted for in the supply figures). The current total of 70 pitches is 22 more than the baseline position of 48 pitches recorded in 2006 and takes into account the loss of 10 pitches at Bicester Trailer Park, Chesterton. On the understanding that there have been no other changes in circumstances from a Development Management perspective, current authorised supply comprises:

Station Caravan Park, Banbury - 10 pitches  
Smiths Caravan Park, Bloxham - 36 pitches  
Bicester Trailer Park, Chesterton - 8 pitches  
Corner Meadow, Mollington - 4 pitches  
Foxfield Farm, Ardley - 1 pitch (personal permission)  
Land adjoining A34, nr. Islip - 8 pitches  
Woodstock Road, Yarnton - 3 pitches (temporary and personal permission)

Another application (12/01368/F refers) is with the Council for additional accommodation at Mollington for 5 pitches which is currently under consideration.

A needs assessment is currently being undertaken to assess future needs but at the time of writing has not been completed.

The Council does not presently have any allocated sites and I am not aware whether any existing pitches are likely to be available for occupation.

- #### **3.3 Head of Public Protection and Development Management (Anti Social Behaviour):** No objection. The comments made on the previous application remain relevant and are as follows: Having carried out a site inspection on 30 April 2012, looking specifically at the question as to whether this site is suitable for residential occupation bearing in mind the proximity of Thames Water installations nearby, it can be confirmed that the closest Thames installation to the site is a Storm Water Pumping Station. This is a facility whereby storm water is pumped from one location to another. Storm water has no odour and therefore the material passing through the site would have no adverse effect on the residents of the proposed caravan site.

There is a second Thames Water Installation between the storm water pumping station and the village. This is a Foul Water Pumping Station. This facility receives sewage by gravity and, using pumps, moves the material through a rising main to another location for treatment. Providing the pumps and control equipment are operating correctly no odour should arise from this activity.

It should be noted that there are already existing dwellings located closer to these facilities and we have no history of complaints of odour originating from either site.

- 3.4 **Head of Safer Communities, Urban & Rural Services (Ecology):** No objection. The comments made on the previous application remain relevant and are as follows: There is no need for any ecological surveys to be carried out. Despite records of great crested newts (GCN) within 500m of the site, the habitat is not particularly suitable for them and there are no ponds nearby (they wouldn't use the stream). Research has shown that most GCN are found within 100m of their breeding ponds. There is little potential for other protected species on the site as it consists of hardstanding and thin overgrown grassland. The wooden fencing around the site prevents any impacts on the adjacent stream resulting from the proposals.

#### **Oxfordshire County Council Consultees**

- 3.5 **OCC Highways:** No objection, subject to condition relating to access details for approval. Appropriate provision would be made for parking and manoeuvring within the site. With regard to transport the location is in accordance with relevant circular 01/2006. The submitted documents provide limited detail of the access and specifically the visibility available. Therefore, a detailed plan of access demonstrating appropriate visibility splays should be submitted prior to any development.
- 3.6 **OCC Drainage:** No objection. Roof water will need to go to soakaway or other Suds feature. All surface water must be dealt with within the boundary of the site and not allowed to leave the site. The site entrance will need to have a surface water retention built in so that surface water cannot leave the site and enter the highway.
- 3.7 **OCC Traveller Site Officer:** Comments were received on the previous application, as follows: In respect of need, there are several private sites within Cherwell at Rossiter's and at Bloxham but we do not know if there are any spaces on these sites. From the information provided in the application we are unable to state if the applicants have been on the roadside in Oxfordshire as we have no record of the name but that does not mean that they have not been on the roadside in Oxfordshire. If we were to have the family name and where they come from it may assist us in knowing if they have another location at which they could or have been living.

#### **Other Consultees**

- 3.8 **Environment Agency:** No objection. An acceptable Flood Risk Assessment has now been received and subject to conditions which would ensure the

protection against flood risk and the conservation and enhancement of the local environment.

- 3.9 **Thames Water:** With regard to waste matters, approval should be sought from TW where the erection of a building or an extension would come within 3m of a public sewer. This is usually refused for new build but may be allowed for extensions. The applicant is advised to contact TW for more information. With regard to water infrastructure, TW has no objection.

#### **4. Relevant National and Local Policy and Guidance**

##### **4.1 Development Plan Policy**

###### Adopted Cherwell Local Plan (Saved Policies)

H6: Housing needs within or adjacent to rural settlements  
H13: Housing within Category I Settlements  
H18: New Dwellings in the Countryside  
C2: Protected Species  
C7: Landscape conservation  
C8: Sporadic development in the open countryside  
C28: Design, layout etc standards  
C30: Design control

###### South East Plan 2009 Policies

CC1: Sustainable Development  
CC4: Sustainable Design and Construction  
CC6: Sustainable Communities & Character of the Environment  
CC7: Infrastructure and Implementation  
H1: Regional Housing Provision 2006 - 2026  
H2: Managing the Delivery of the Regional Housing Provision  
H3: Affordable Housing  
H4: Type and Size of New Housing  
H5: Housing Design and Density  
T1: Manage and Invest  
T4: Parking  
NRM1: Sustainable Water Resources & Groundwater Quality  
NRM2: Water Quality  
NRM4: Sustainable Flood Risk Management  
NRM5: Conservation and Improvement of Biodiversity  
NRM11: Development Design for Energy Efficiency and Renewable Energy  
C4: Landscape and Countryside Management  
C5: Managing the Rural-Urban Fringe  
BE1: Management for an Urban Renaissance  
BE4: The Role of Small Rural Towns  
S1: Supporting Healthy Communities  
CO1: Core Strategy  
CO3: Scale and Distribution of Housing

##### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

Planning Policy for Traveller Sites

This document sets out the Government's planning policy specifically for traveller sites and should be read in conjunction with the NPPF.

Further guidance also continues to be provided with the document 'Designing Gypsy & Traveller Sites (Good Practice Guide)'

#### The Annual Monitoring Report 2011

Assessment needs to 2018 have been completed and the number of pitches are noted (updated by the Planning Policy comment above)

Human Rights Act 1998

Housing Act 2004

The Equality Act 2010

Circular 11/1995: The Use of Conditions in Planning Permission

#### Cherwell Local Plan - Proposed Submission Draft (August 2012)

The draft Local Plan is out for public consultation. Although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

BSC1: District Wide Housing Distribution

BSC2: The Effective and Efficient Use of Land

BSC3: Affordable Housing

BSC6: Travelling Communities

ESD1: Mitigating and Adapting to Climate Change

ESD6: Sustainable Flood Risk Management

ESD7: Sustainable Drainage Systems (SuDS)

ESD8: Water Resources

ESD10: Protection and Enhancement of Biodiversity & the Natural Environment

ESD13: Local Landscape Protection & Enhancement

ESD16: The Character of the Built Environment

Policy Villages 1: Village Categorisation

Policy Villages 2: Distributing Growth Across the Rural Areas

#### Non-Statutory Cherwell Local Plan 2011

In December 2004 the Council resolved that all work to proceed towards the statutory adoption of a draft Cherwell Local Plan 2011 be discontinued. However, on 13 December 2004 the Council approved the Non-Statutory Cherwell Local Plan 2011 as interim planning policy for development control purposes. Therefore this plan does not have Development Plan status, but it can be considered as a material planning consideration. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

H1a: Location of New Housing

H4: Types of Housing

H15: The Category 1 Villages

H19: New Dwellings in the Countryside

H26: Caravan Sites for Gypsies

TR1: Transport and Development  
TR5: Road Safety  
TR11: Parking  
EN1: Conserving and Enhancing the Environment  
EN13: Development Adjacent to Watercourses  
EN14: Flood Defence  
EN15: Surface Water Run-off and Source Control  
EN16: Land Resources  
EN30: Countryside Protection  
EN34: Landscape Character

## 5. Appraisal

- 5.1 Although a similar application has recently been presented to Committee and determined with the only reason for refusal being the flood risk, it is worth rehearsing the issues that were under consideration last time in order to fully understand all the key issues which are as follows and to ensure that they are properly up to date:
- Policy Context
  - Housing Need
  - Suitability of the site
  - Landscape Impact
  - Access and highway safety
  - Flooding

### Policy Context

- 5.2 The policy position remains unchanged. The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having 3 dimensions: economic, social and environmental. Also at the heart of the NPPF is a presumption in favour of sustainable development and in the context of this application would include promoting sustainable transport, delivery of a wide choice of high quality homes, the promotion of healthy communities, meeting the challenge of flooding and the conservation and enhancement of the natural environment.
- 5.3 Paragraph 14 of the NPPF states that where the development plan is absent, silent or relevant policies are out of date, in order to reflect the thrust of the guidance for a *presumption in favour of sustainable development*, planning permission should be granted unless harm can be identified.
- 5.4 The provision of sites for the travelling community is very much embroiled within the housing policy context. The most recent government guidance, which was issued in March 2012, is “Planning Policy for Traveller Sites” and this document should be read in conjunction with the NPPF. The Government’s overarching aim is to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. The guidance aims to increase the number of traveller sites in appropriate locations to address under provision and maintain an appropriate level of supply.

- 5.5 Policy C of the Government Guidance advises that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities (LPAs) should ensure that the scale of such sites does not dominate the nearest settled community.
- 5.6 Policy H of the same guidance states that LPAs should consider the following matters:
- a) the existing level of local provision and need for sites;
  - b) the availability (or lack) of alternative accommodation for the applicants;
  - c) other personal circumstances of the applicant;
  - d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites;
  - e) that they should determine applications for sites from any travellers and not just those with local connections.
- 5.7 Policy H goes on to advise that LPAs should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. When considering applications LPAs should attach weight to the following matters:
- a) effective use of previously developed (brownfield), untidy or derelict land; sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
  - b) promoting opportunities for health lifestyles, such as ensuring adequate landscaping and play areas for children;
  - c) not enclosing a sites with so much hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
- 5.8 At a more local level of policy guidance, Policy BSC6 of the Proposed Submission Local Plan, indicates that locations outside of the Green Belt will be considered in identifying suitable sites by applying a sequential approach. The sites should be within 3km road distance of the built up limits of ...a Type A village (Launton). Various assessment criteria are also laid out including access to health services, schools, highway network. Other criteria relate to the general suitability of the site in terms of flooding, potential for nuisance or harm to historic or natural environment, general living environment, whether the site is an efficient and effective use of the land and its deliverability in terms of utilities.

### **Housing Need**

- 5.9 The housing need situation remains unchanged. A District-wide needs assessment is currently being undertaken for the Council to assess the needs of the district for gypsy and traveller sites into 2031. In the meantime, based on the latest information obtained by previous similar and recent cases (10/00839/F in Hampton Gay & Poyle, 11/01863/F in Bloxham and 11/01356/F in Yarnton) it is only possible to reveal that the District has increased the provision available to 70 (3 of those are temporary). In addition a planning application has recently been submitted at Mollington for 5 additional pitches (12/01368/F refers). However, this does not necessarily mean that the needs

are met or that they will be met in the future. Nor does it clarify whether or not any of the pitches are available now or in the future.

- 5.10 Other data can be obtained from the Gypsy and Traveller Accommodation Needs Assessment (GTAA) by consultants for all authorities in the Thames Valley area but this was produced in 2006 and only calculated need to 2011. The Council's position to date is, therefore, that we have no reliable needs based information. The applicant's agent is justifying the level of need based on the Hampton Gay & Poyle case which pre-dates our current position. The Council's data includes this figure and has made further provision since.
- 5.11 So, whilst the level of need that may be identified by the new Needs Survey cannot be predicted, it is likely that household growth and 'concealed need' (for example, overcrowding) will create a requirement for new pitches. Further, the advice at national level is that LPAs should be increasing the number of traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply. Further, the policy team is not aware of any existing pitches that are likely to be available for occupation.
- 5.12 Under the current guidance, as the Council cannot demonstrate an up-to-date five year supply of deliverable sites; if the site is otherwise acceptable, consideration should be given to a temporary planning permission. (paras 25 and 28 of Planning Policy for Traveller Sites). Policy on the use of temporary permissions is set out in Circular 11/1995: *The Use of Conditions in Planning Permission* which states that there is no presumption that a temporary planning permission should become permanent.

### **Suitability of the site**

- 5.13 The site is outside the built up area of the village and raises a number of issues largely defined by the requirements of Policy BSC6 of the Proposed Submission Local Plan and Policy H of the Government's guidance on planning policy for traveller sites.
- 5.14 The need for the site and how it came to be identified as a potential gypsy and traveller site may be driven by the personal circumstances of the applicant. In seeking to obtain further information the applicant's agent has advised the Council that this would only be a relevant consideration where there is a breach of development plan policy and other material considerations come into play. As the development plan is silent or absent with out of date policies then government guidance would indicate that the application should be looked on positively. We are further advised that the applicants do have local connections and that they are homeless without access to a lawful, suitable, affordable or available pitch on which to reside.
- 5.15 Considering first the site's location, it is close to this Category 1 village and within the advised 3km distance from the built-up limits. It therefore has good access to the amenities offered by the village including health services, a primary school, bus services and a shop. There is also scope to provide essential services like mains water, electricity and sanitation (septic tank). The distance from the village is considered to be close enough to allow social inclusion and at the same time respect for privacy thereby promoting the

governments desire to see an integrated co-existence between the site and the local community. The proximity to the pumping station does not represent a nuisance for new residents and the site is otherwise suitable for living accommodation. Other site constraints regarding flooding and impact on the natural environment are addressed under separate headings.

- 5.16 The site has a useable area for 2 pitches despite the requirement to retain an 8m buffer from the brook to avoid flooding. At the present time only one of the touring caravan spaces is affected by this and there is sufficient space for it to be relocated. The layout would otherwise comply with the Good Practice Guide relating to the design of gypsy and traveller sites. Being just 2 pitches, this application can be one which represents a very small scale site which are known to work well for single extended families. It is considered that at this scale, the development will not dominate the nearest settled community and will avoid placing undue pressure on the local infrastructure.

### **Landscape Impact**

- 5.17 With the site being outside the built up limits of the village it is, by definition, within the countryside but its particular characteristics would suggest that it is of not of high quality either in terms of its use for agricultural purposes or as an area of notable attractive features. It is already part laid to tarmac and with sporadic areas of scrub and thin overgrown grassland. The existing fencing also prevents views into the wider landscape from the public domain of the roadside.
- 5.18 Whilst unremarkable countryside, existing policy would suggest that open countryside areas ought to be protected for their own sake and this is why development outside of villages is restricted to special cases such as agricultural or housing need. However, the NPPF in paragraph 109, advises that the planning system should be protecting and enhancing *valued* landscapes. In some ways the site could be described as having been previously developed and so the effective use of such land should be encouraged because the site is not of high environmental value.
- 5.19 With some hardstanding already in place and a fence for security the established characteristics of the site are unlikely to have to be changed to any significant degree. The retention of the timber post gate which allows views across the site and beyond should be retained to ensure that the impression is not given that the site and its occupants are deliberately isolated from the rest of the community.

### **Flooding**

- 5.20 Whilst not within a flood zone, the site is noted as being adjacent to flood zones 2 and 3 and close to an unnamed stream. The applicants latest Flood Risk Assessment has been scrutinised by the Environment Agency who are now satisfied that the site is acceptable for the use proposed subject to conditions which will ensure the protection against flood risk and the conservation and enhancement of the local environment.

### **Access and highway safety**

5.21 There is one established access point to the site from Blackthorn Road. This entrance is close to a bend in the road and there are no speed limitations at this point. In consultation with the County Council, as highway authority, there is no objection to the proposal subject to a condition relating to access details for approval. Appropriate provision would be made for parking and manoeuvring within the site. With regard to transport the location is in accordance with relevant circular 01/2006. The submitted documents provide limited detail of the access and specifically the visibility available. Therefore, a detailed plan of access demonstrating appropriate visibility splays should be submitted prior to any development.

## Conclusion

5.22 The only issue which remained unresolved from the last time Planning Committee considered a similar application related to flooding as the position on all other matters was accepted. A need for more gypsy sites can still not be confirmed at this time and with the absence of this information and given that we have no adopted policy addressing the issue (only guidance at local and central level) the application ought to be considered favourably and subject to interests of acknowledged importance, which in this case amount to the general suitability of the site, flooding, highway safety and landscape impact. Having considered the issues arising, it has been demonstrated that the site is generally acceptable and ought to be approved albeit for a temporary period to allow the Council to review its position in the light of new data that is due shortly. A temporary consent ought not prejudice the applicants as little investment in the site is required to enable occupation. Also, government advice states that there is no presumption that a temporary planning permission should become permanent.

## 6. Recommendation

**Approval**, subject to the following conditions:

1. That at the expiration of 2 years from the date hereof the use specified in the application shall be discontinued and the land shall be restored to its former condition on or before that date.

Reason – To enable the Council to review the position at the expiration of the stated period in accordance with Government guidance within the '*Planning policy for traveller sites*' particularly with regard to the need for gypsy and traveller sites and/or in view of the special/personal circumstances of the case which override basic planning objections to the development in accordance with Policy H18 of the adopted Cherwell Local Plan.

2. That this permission shall enure for the benefit of Mr and Mrs Gerry and Kathleen Connors and their immediate family only and of no other persons whatsoever, and shall not enure for the benefit of the land. In any event the site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of '*Planning policy for traveller sites*'. Upon the applicant ceasing to occupy the land, it shall revert to its former use.

Reason – In view of the special circumstances and needs of the applicant which are sufficient to justify overriding the normal planning policy

considerations which would normally lead to a refusal of planning consent in accordance with Government guidance and Policy H18 of the adopted Cherwell Local Plan.

3. 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: Planning application form, and drawing no. 1129/03 and the red line site location plan received with the application.

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

4. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) produced by Bureau Veritas ref 5118028 issue 2, dated 01 February 2012, and the following mitigation measures detailed within the FRA:
  1. Finished floor levels of the static mobile homes are set no lower than 700mm above existing ground level.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme (referred to in condition 5), or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

Reason - To protect the development and its occupants from the risk of flooding and in order to comply with Government guidance contained within the National Planning Policy Framework and Policy NRM4 of the South East Plan 2009.

5. Notwithstanding the layout of the site shown in drawing no. 1129/02, prior to the commencement of the development a scheme for the provision and management of a buffer zone from the Launton Brook, 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:
  1. plans showing the extent and layout of the buffer zone and the layout of the site;
  2. details of the planting scheme (for example, native species);
  3. details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term;
  4. details of any footpaths, fencing and lighting.

Reason – To protect the development and its occupants from the risk of flooding and in the interests of biodiversity and in order to comply with Government guidance contained within the National Planning Policy Framework and Policies C4, NRM4 and NRM5 of the South East Plan 2009.

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

Reason – In order to safeguard the amenities of the area and in the interest of highway safety in accordance with Policy C28 of the adopted Cherwell Local Plan and the National Planning Policy Framework.

7. No more than 2 pitches (1 No. caravan, 1 No. mobile home and 1 No. day room per pitch) shall be accommodated at the site.

Reason – In order to achieve a satisfactory form of development to ensure that the site is not overdeveloped and to comply with Policy BE1 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

8. Prior to the development of the day rooms, samples of the materials to be used on the external surfaces of the day rooms hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Thereafter 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 BE1 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

9. That before the development is first occupied, all the means of access between the land and the highway shall be formed, laid out, constructed and drained in such position(s) and with such vision splays as shall be submitted to and approved in writing by the Local Planning Authority.

Reason – In the interests of highway safety to ensure a satisfactory standard of construction for the development and to comply with the National Planning Policy Framework.

10. That full details of the septic tank including its siting and size shall be submitted to and approved in writing by the Local Planning Authority prior to it being installed. Thereafter the septic tank shall be installed in accordance with the details so approved.

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

11. That full details of the mobile homes shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the site. Thereafter 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 BE1 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

12. That except to allow for the means of access and vision splays required by condition 9, the existing hedgerow/trees on the west and south boundaries shall be retained and maintained at a height of not less than 3 metres.

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

13. That the timber gate at the access shall be retained and no other gate or structure shall be put in its place at the site entrance without first agreeing details with the Local Planning Authority.

Reason – In order to achieve a satisfactory form of development which will allow for the proper surveillance and openness of the site, in the interests of the visual amenities of the area and to ensure the creation of a pleasant environment to comply with government guidance contained within the Government guidance '*Planning policy for Traveller sites*', Policy C4 of the South East Plan and Policy C28 of the adopted Cherwell Local Plan.

Planning Note:

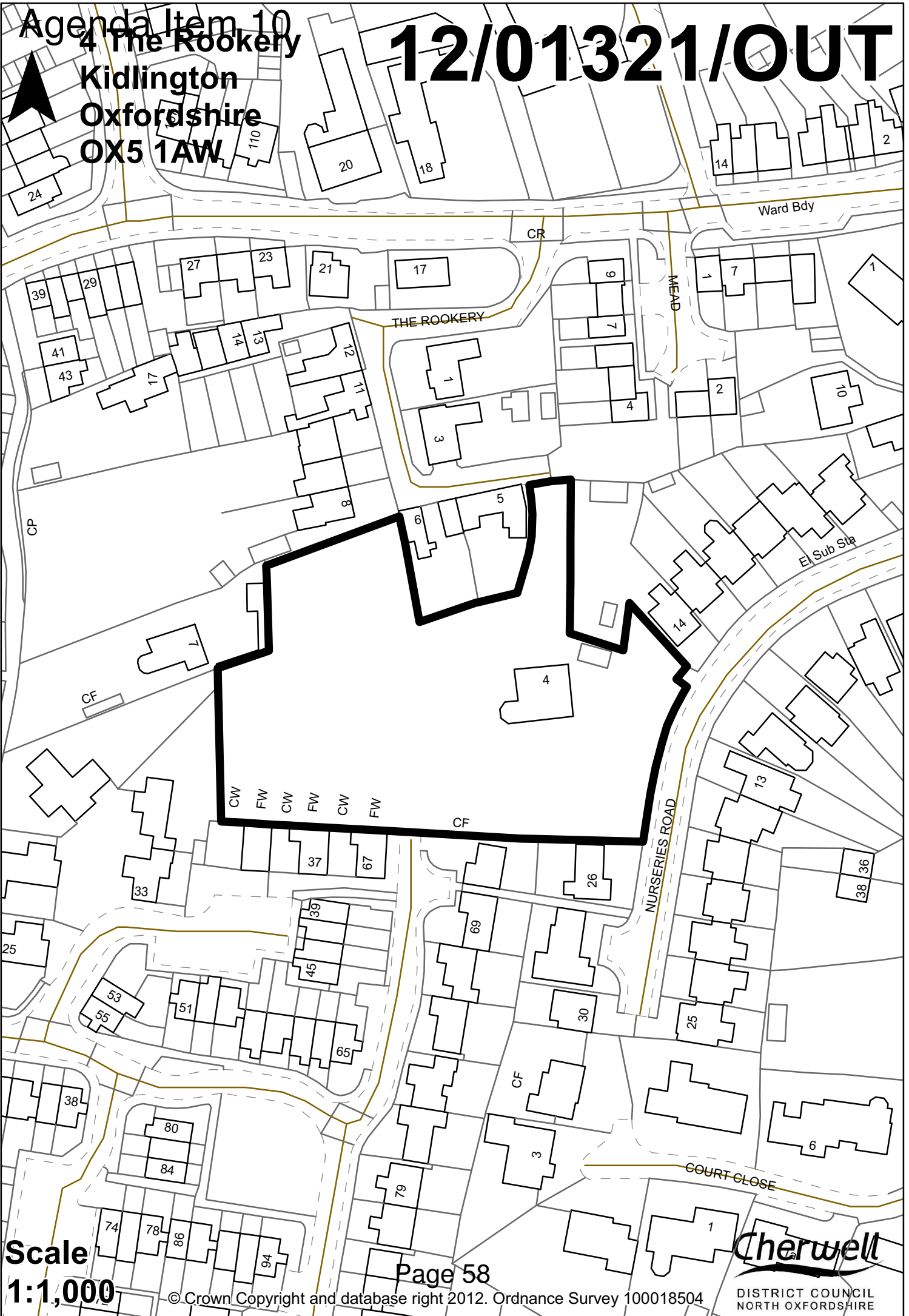
1. With regard to condition 9, alterations to the highway are subject to separate approval under Section 184 of the Highways Act. A licence may be obtained from the Local Highway Authority on 08453 10 11 11.
2. Roof water will need to go to soakaway or other Suds feature. All surface water must be dealt with within the boundary of the site and not allowed to leave the site. The site entrance will need to have a surface water retention built in so that surface water cannot leave the site and enter the highway.
3. Thames Water have been consulted in respect of this application and it should be noted that there are public sewers crossing or close to the development. In order to protect public sewers and to ensure that Thames Water can gain access to those sewers for future repair and maintenance, approval should be sought from Thames Water where the erection of a building or an extension to a building or underpinning work would be over the line of, or would come within 3 metres of a public sewer. Thames Water will usually refuse such approval in respect of construction of new buildings, but approval may be granted in some cases for extensions to existing buildings. The applicant is advised to contact Thames Water Developer Services on 0845 850 2777 to discuss the options available at this site.

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

The Council, as the local planning authority, has determined this application in accordance with the development plan, unless material considerations indicate otherwise. The development is considered to be acceptable on its planning merits as the level of harm caused to the open countryside is appropriately outweighed by the acknowledged need for gypsy and traveller sites in the District. The site is in a sustainable location and of a design, size and style that is appropriate that will not unduly impact on neighbouring properties or the community generally, cause harm to highway safety or give rise to increased flood risk. As such the proposal is in accordance with Government guidance contained within the National Planning Policy Framework and within the '*Planning policy for traveller sites*', Policies NRM4, NRM5, C4 and BE1 of the South East Plan 2009 and saved Policies H6, H13, H18, C7, C8, C28 and C30 of the adopted Cherwell Local Plan. 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.

Agenda Item 10  
4 The Rookery  
Kidlington  
Oxfordshire  
OX5 1AW

# 12/01321/OUT



Scale  
1:1,000

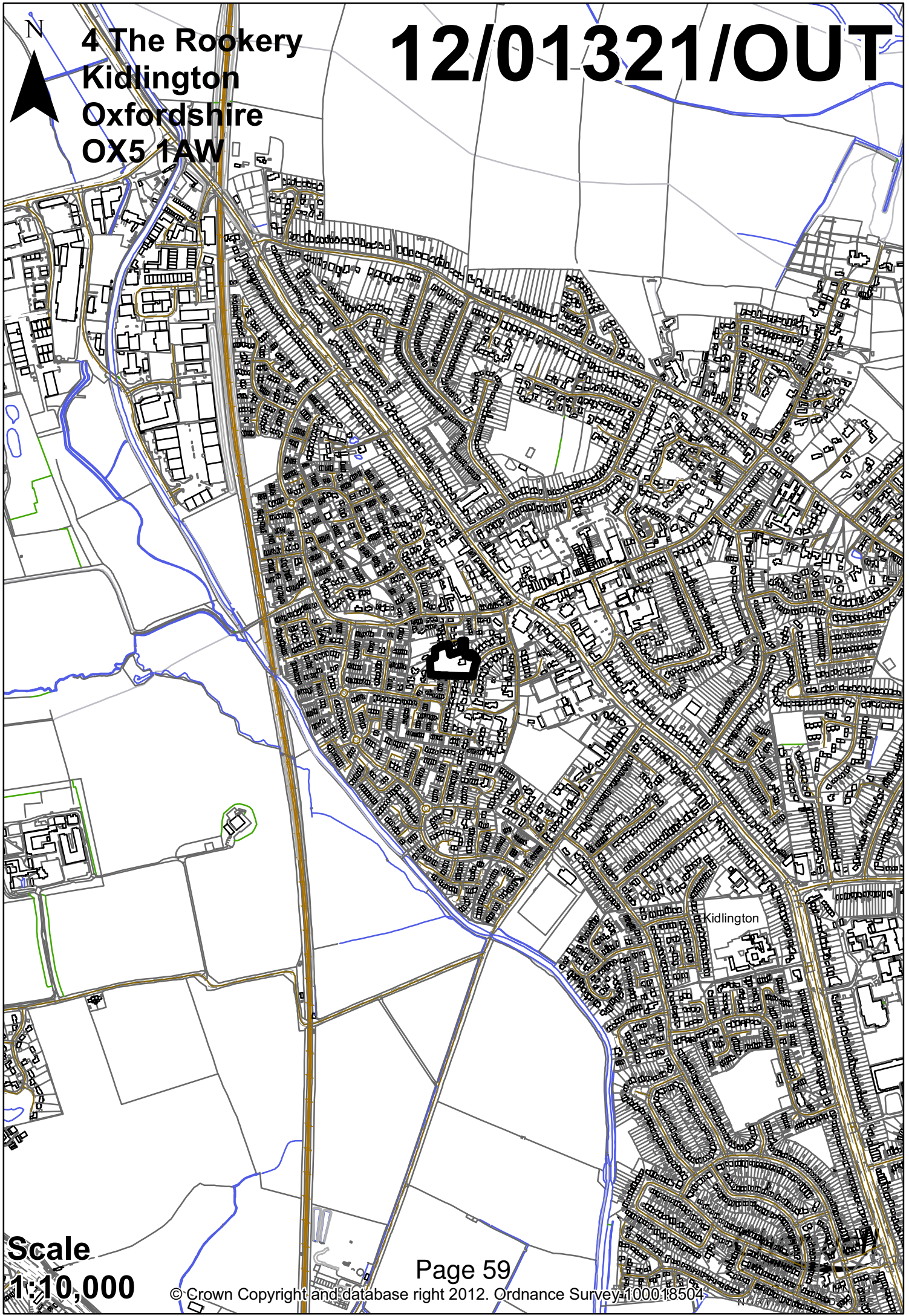
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**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

# 12/01321/OUT

4 The Rookery  
Kidlington  
Oxfordshire  
OX5 1AW



Scale  
1:10,000

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**Site Address: 4 The Rookery, Kidlington**

**12/01321/OUT**

**Ward: Kidlington South**

**District Councillor(s): Cllrs Billington, Emptage and Prestidge**

**Case Officer: Tracey Morrissey**

**Recommendation: Approve**

**Applicant: Thinking Buildings**

**Application Description:** Outline – site redevelopment of 11 no. residential dwellings with associated road infrastructure, parking and garaging (resubmission of 12/00460/OUT).

**Committee Referral:** Previous scheme on this site determined by Committee

### **1. Site Description and Proposal**

- 1.1 This application relates to a site occupied by a 1960's single storey dwelling with rooms in the roof, set within an extensive woodland garden of 0.5ha. The site is surrounded by a mixture of residential properties; to the east, late 1960's 2 storey development known as Nurseries Road; to the south and west 1970's 2 storey and single storey development of The Phelps and Grovelands. To the north are older 19th century, traditional, limestone properties, designated as The Rookery Conservation Area, because of their historic significance. There are however no listed buildings in close proximity and the site itself, is not within the Conservation Area. Access is via the tight winding roadway of The Rookery.
- 1.2 Despite the site having significant tree coverage, there are no TPO's. The majority of the southern, western and eastern boundaries comprise large mature Leylandii Cypress trees, which dominate The Phelps and Nurseries Road streetscene. A 1.8m high close boarded fence also runs along the eastern boundary of Nurseries Road.
- 1.3 This application follows the refusal of a scheme for 14 no. residential dwellings that was reported to Members at the June meeting. Since then a public consultation exercise was carried out by the applicants on 3<sup>rd</sup> August 2012 at Exeter Hall. Prior to this consultation exercise two options were submitted for further consideration by Officers; of these two options the scheme currently before Members was the preferred choice. Notwithstanding that, a third option was suggested by the case officer, which essentially saw the whole development served off Nurseries Road by continuing the road on past Plots 3 and 10, thus resulting in no traffic going past the neighbour at no. 67 The Phelps. The applicant did not take up this further suggested option based on feed back from the public consultation exercise.
- 1.4 Outline consent is now sought for the redevelopment of this site that includes the demolition of the existing dwelling and construction 11 dwellings, comprising 2 no. 2 bedroom units, 4 no. 3 bedroom units, 2 no. 3/4 bedroom units and 1 no. 4 bedroom unit and 2 no. 4/5 bedroom units. The means of access and site layout are submitted for determination at this stage with appearance, landscaping and scale reserved for the later stage. Indicative scales of proposed dwellings include 7.8m – 8.1m heights and floor areas ranging from 77m<sup>2</sup> (2 bed), 84 -132m<sup>2</sup> (3/4 bed) to 165m<sup>2</sup> (4/5 bed).

1.5 The proposed site and layout has been organised into 3 distinct development areas with 6 no. units being accessed off The Phelps (previously 10 no. units) and 5 no. units accessed off Nurseries Road.

- Development Area 1 comprises 3 detached dwellings (plots 3, 10 and 11), two of which are 2½ storey and are accessed from Nurseries Road via a new access road, arranged around a new turning head with associated parking. Occupying the north east corner of the site stretching from the existing access drive from the Rookery to the eastern boundary with Nurseries Road and incorporates a large mature Copper Beech tree (T11) as a feature within the proposed public open space.
- Development Area 2 involves infilling the Nurseries Road frontage with a pair of two storey semi-detached dwellings, which follow the existing street pattern with parking provision to the front.
- Development Area 3 is accessed off The Phelps and comprises two terraces of three properties (2no. x 2 bed and 4no. x 3 bed). The layout of this section is arranged around a central roadway that provides access to a small access court at the northern end with an area of public open space and trees to the east.

Each dwelling will have at least 2 parking spaces, with a total of 29 no. Parking spaces provided for the whole development (25 no. Allocated and 4 no. Unallocated).

1.6 The site is within 2km of Rushey Meadows SSSI and a site of Archaeological interest. It is not within a designated area of flood risk and therefore no FRA is required.

1.7 The application has been submitted with Topographical, Arboricultural and Phase 1 Habitat survey reports and a Transport Statement.

## **2. Application Publicity**

2.1 The application has been advertised by way of site notice and neighbour letters. The final date for comment on this application was 25<sup>th</sup> October 2012.

2.2 1 letters/emails of support has been received commenting that:

- the scheme is a good outcome for improving the area and including a new small area of open pleasant park land for the residents to enjoy.
- The road network has more than capacity; the proposal is a 0.5% increase in journeys on the road.
- This is a good plan for the site, all houses are the same or further away from any neighbouring plots than the previous plan.
- All the important trees, which are in good health, are retained and additional trees planted to replace the largely unhealthy trees being removed.
- The housing density has been further decreased making it now significantly lower than The Phelps or The Rookery are, and on a Par with that side of Nurseries Road.
- The relatively narrow access will not create the 'gridlock' claimed, this is a

massive over dramatisation of the traffic loads that such a small number of houses will create

- There are others broadly supportive that are too fearful to voice this opinion publicly. As well as the silent majority who presumably have no concern over the plans therefore must agree to it by default, by choosing not to voice an opinion.

2.3 18 individual letters/emails of objection have been received Full details are available electronically via the Council's website.

The material planning considerations raised as objections are as follows:

- Whilst number of houses reduced, those proposed are larger houses than those previously refused.
- Density of development is still far above an acceptable level
- Still 6 houses and 12 cars and visitors via The Phelps
- Access issues have not been addressed
- Loss of many lovely trees and green open area
- Loss of wildlife
- Nothing is offered which would enhance or improve the surrounding area
- The Phelps is a cul-de-sac, a quiet and safe location, used by many pedestrians from the Grovelands estate who will be put at increased risk with much more traffic and that it will become a car park.
- There will be an impact on utilities
- Is there course for concern regarding contamination?
- 67 The Phelps is a single storey 2 bedroom property with a direct frontage access to the road, there is no footway separating the front wall of the house and the road (2m distance).
- No. 67 has no off street parking, which would cause inconvenience to occupier and hazardous to road users trying to enter and exist the site as parking usually occurs outside the front door – possibly lead to a TRO being place in turning head
- The internal layout shows a footpath to the west side terminating at the ownership of no. 67, this will lead to possible pedestrian movements on private land or closer to the house and looking into bedroom windows.
- Loss of privacy, quality of life and amenity from overlooking
- The Phelps cul-de-sac end is narrow, it was never designed to allow more traffic and has only a pavement on one side.
- Whilst the majority of The Phelps road is 5.5m wide as it approaches the turning head at the point of access into the site, the carriageway reduces to 4.3m wide. Large refuse or delivery vehicles have to reverse down the road
- Reducing number of dwellings from 14 to 11 applicant claims to have significantly reduced density of approx 20%, but the proposal increases the average size of each dwelling by approx 10%, therefore number of bedrooms proposed is in fact only decreased by approx 13%.
- Three storey properties are now proposed.
- Following the consultation exercise at Exeter Hall, the applicant appears not to have considered other suggestions made to the layout of the site. The third option suggested by CDC was dismissed, which is unfortunate as this may have been well met by the public.
- Kerbside parking will impact on surrounding roads, increasing the already chaotic parking issues along the narrow roads of The Phelps and Nurseries

Road and will result in hazardous safety problems for pedestrians and other road users. Disputes already exist – this will make it worse

- Construction vehicles would add to congestion of Crown Road which is already often blocked by cars, vans and HGVs/car transporters behind Audi garage – they should not use this route
- The new access would require improvements to the pedestrian / cycle pathway and would be difficult to engineer given the proximity of neighbouring properties nos. 67 and 69 The Phelps, and is only 4.3m wide not 4.5m mentioned in the report.
- NPPF is not designed for a free for all development charter – need to consider the character of the area and loss of amenity to neighbouring residents and highway safety issues, which are all material considerations.
- Development is contrary to Paragraph 53 of the NPPF and there is no evidence of binding decisions that supports the application.
- Housing land deficiency is not a viable case
- Contrary to Oxford Local Transport Plan 2011-2030 to reduce traffic, congestion, casualties and dangers and reduce carbon emissions.
- Impact on Human Rights – Protocol 1 Article 1 Protection of property; persons right to the peaceful enjoyment of their property

Non-material comments include:

- Noise during construction
- Ironical that the northern end of The Phelps was not developed by 2 storey houses because owners of No. 4 The Rookery objected at being overlooked!
- Extensive site clearance and major disruptions
- Loss of property value
- Loss of green space will be like taking Central Park out of New York!

### **3. Consultations**

3.1 Kidlington Parish Council – object on the following grounds:

- The proposal still requires the removal of a substantial number of trees which will be detrimental to the amenity of the surrounding environment
- In the absence of a legal agreement – not satisfied that there will be sufficient contribution to local open space of recreational facilities and sufficient funding for future maintenance of the open space and in particular to cover T11 located on that open space which has the potential to cause undermining damage to adjacent dwellings at a cost to the authority and Parish Council

### **Cherwell District Council Consultees**

3.2 Ecologist – The Phase 1 ecological survey found no evidence of protected species using the site, although it will most likely be used by nesting birds, foraging bats and hedgehogs (which are now a UK BAP priority species). Other than this, the site has relatively low ecological value. No further surveys are required.

The report made a number of recommendations with regards to biodiversity protection measures (eg careful treatment & retention of brash/wood piles and

minimal external lighting) and enhancement features (such as bat tubes/boxes and bird boxes). Given the value of the site to some species locally, the provision within the NERC Act 2006 for LPA's to take or promote steps to further the conservation of BAP species and Cherwell Policy on enhancing biodiversity, a biodiversity enhancement scheme should be submitted for approval at a later stage. This would detail the following:

- the measures to be taken to ensure the development proceeds in a sensitive manor with regards to bats, birds and hedgehogs (as stated in the Phase 1 Habitat Survey report).
- the biodiversity enhancement features to be incorporated within the new dwellings and/or around the site (eg bat boxes/tubes, bird boxes). The scheme is to specify the number proposed, type and exact locations.
- the existing areas of trees and planting to be retained and how these will be protected during the construction phase.
- the proposed planting scheme for public and private areas (recommendations as to suitable species are made in the Phase 1 report).

As the Phase 1 report is fairly specific, parts of this could be used to provide some of the detail for such a scheme.

- 3.3 Arboriculture officer – The main arboricultural concerns of this application was the need to retain the category 'B' trees (no category 'A' on site) trees where possible and secondly to provide sufficient space for replacement plantings required to mitigate any losses and to provide a level of screening between this development and the existing dwellings to the south in particular.

Following consultation with the applicant, more space has now been allocated for landscaping within the site adjacent to Plot 10 and Plots 4, 5, & 6 and an increase in clearance between the adjacent plots and the southern boundary allows for a more substantial and effective planting scheme

Details regarding the landscaping scheme are yet to be agreed.

All, bar one of the category 'B' trees are now identified for retention and should be adequately protected during the development through the conditioning of an agreed method statement.

- 3.4 Environmental Protection Officer - The closest potential contamination identified relates to a shallow surface water feature approximately 50 metres to the west of this development boundary which may have been unfilled. This is unlikely to affect this development.

I don't have information which indicates contamination is present on this site, but also do not have information which indicates it is not. As the proposal is residential, it's introducing people that would be vulnerable if contamination is present on the site. As such, I recommend the full contaminated land conditions are applied to assess the risk from contamination.

- 3.5 Landscape (urban and rural services) – play facilities – off site contribution in lieu of LAP provision on site. Informal open space – 200m<sup>2</sup> provided on site along with maintenance amount.

- 3.6 Waste Collection Manager – refer to waste guidance for refuse bins/storage etc and financial contribution

### **Oxfordshire County Council Consultees**

- 3.7 Highways – No objection in principle subject to conditions. Various elements of the plans will need to be revised, i.e. the width of the new access road from Nurseries Road (which is too narrow), and the reversing space internally within the site behind visitor parking space (which must be 6m). Contributions will be sought towards OCC services and infrastructure to mitigate the impacts of the proposed development. A transport developer funding contribution of £11,088 (index-linked) is requested in line with Cherwell District Council Planning Obligations SPD
- 3.8 Archaeologist - The proposal does not appear directly to affect any presently known archaeological sites. If archaeological finds do occur during development the applicant is asked to notify the County Archaeologist in order that he may make a site visit or otherwise advise as necessary.
- 3.9 Drainage - It is acknowledged that the application is for outline planning only, however surface water and roof water run-off will need to go to soak-away or other Suds feature for each property created, ie all surface water created as a result of each property will need to be dealt with within the each property boundary. Where shared Suds features are proposed, these features could be adopted by the Lead flood Authority which at the present time is Oxfordshire County Council. Should a full planning application be submitted, full details of the proposed drainage strategy will be required.
- 3.10 Developer funding - wishes to secure a legal agreement for appropriate financial contributions to mitigate the impact this development will cause if implemented in line with your Draft Supplementary Planning Obligations Document (July 2011).

Indicative plans support section 17 of the application; 2 two bedroom, 4 three bedroom and 5 four bedroom homes are proposed to replace 1 three bedroom dwelling presently on site.

Therefore net impact amounts to 2 two bedroom, 3 three bedroom & 5 four bedroom extra homes. We accordingly expect the population to increase by 32 people including 2 pensioners if these homes are built and occupied. We further anticipate at least 5 pupils will attend mainstream schools, in addition to any attending private education or separate schools for those with special educational needs.

There is sufficient capacity in catchment schools and therefore no contributions are necessary in respect to education. There will however be a requirement to contribute £5256.00 towards Libraries, Museum, Adult education, Day resources care centre for elderly, Strategic household waste management.

The contributions identified are necessary to protect the existing levels of infrastructure for local residents.

They are relevant to planning the incorporation of this development within the local community, if it is implemented.

They are directly related to this proposed development and to the scale and kind of the proposal.

They are reasonable and that they should ensure that this proposal is not subsidised by the community, except where sufficient capacity in infrastructure already exists which can absorb the expected impact of this proposed development.

#### **Other consultees**

- 3.11 Natural England - refers to previous response under 12/00460/OUT. The proposal does not affect Statutory Protected sites or landscapes or have a significant impact on the conservation of soils not is the proposal EIA development. Refer to Standing Advice in respect to protected species and species protected by domestic legislation. The scheme provides an opportunity to provide enhancement measures.
- 3.12 Thames Water – raises no objection to the proposal
- 3.13 Environment Agency – Low risk development and therefore no comments to make

#### **4. Relevant National and Local Policy and Guidance Policy Considerations**

##### 4.1 Development Plan Policy

###### Adopted Cherwell Local Plan (Saved Policies)

- C2: Protected Species
- C4: Creation of new habitats
- C23: Retention of buildings, walls and trees
- C28: Layout, design and external appearance of new development
- C30: Design control and context compatibility
- C33: Retention of undeveloped gap
- TR1: Transportation Funding

###### South East Plan 2009

- H1: Regional Housing Provision 2006-2026
- H2: Managing the delivery of Regional Housing Provision
- H4: Type and size of new housing
- H5: Housing design and density
- CC1: Sustainable development

- CC4: Sustainable Design and Construction
- CC6: Sustainable Communities & Character of the Environment
- CC7: Infrastructure and Implementation
- BE1: Management for an urban renaissance
- BE5: Village Management
- BE6: Management of the Historic Environment
- NRM5: Conservation and environment biodiversity
- T1: Manage and Invest
- T4: Parking
- CO1: Core Strategy
- CO5: Transport
- S6: Community infrastructure

#### 4.2 Other Material Policy and Guidance

##### National Planning Policy Framework

##### Cherwell Local Plan – Proposed Submission Draft (August 2012)

The draft Local Plan has recently completed the public consultation and although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

BSC1: District wide housing distribution

BSC2: The effective and efficient use of land

BSC4: Housing mix

BSC10: Open space, outdoor space and recreation provision

BSC11: Local standards of provision – outdoor recreation

BSC12: Indoor sport, recreation and community facilities

ESD1: Mitigating and adapting to climate change

ESD3: Sustainable construction

ESD7: Sustainable Drainage Systems (SuDs)

ESD10: Protection and enhancement of biodiversity and the natural

environment

ESD13: Local landscape protection and enhancement

ESD16: Character of the Built Environment

Policy Villages 1 : Village Categorisation A

INF1: Infrastructure

#### Non-Statutory Cherwell Local Plan 2011

In December 2004 the Council resolved that all work to proceed towards the statutory adoption of a draft Cherwell Local Plan 2011 be discontinued. However, on 13 December 2004 the Council approved the Non-Statutory Cherwell Local Plan 2011 as interim planning policy for development control purposes. Therefore this plan does not have Development Plan status, but it can be considered as a material planning consideration. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

TR1, TR4, TR5 and TR11: Transport and development policies

H1a, H3, H4, D1, D2, D3 and D6: Housing and design policies

R8, R9 and R10a: Recreation and community facilities

EN23, EN24, EN25, EN37, EN40 and EN47: Conserving and enhancing the environment

## 5. Appraisal

5.1 The key issues for consideration in this application are:

- Policy Context
- Five Year Supply of Housing
- Principle of development
- Access and highway safety
- Neighbour impact
- Trees
- Ecology
- Planning Obligations/infrastructure contributions

### **Policy Context and principle of development**

5.2 The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having 3 dimensions: economic, social and environmental. Also at the heart of the NPPF is a presumption in favour of sustainable development and in the context of this application would include building a strong and competitive community, promoting sustainable transport, requiring good design, the promotion of healthy communities, meeting the challenge of flooding and the conservation and enhancement of the historic environment.

- 5.3 Paragraph 14 of the NPPF states that where the development plan is absent, silent or relevant policies are out of date, in order to reflect the thrust of the guidance for a *presumption in favour of sustainable development*, planning permission should be granted unless harm can be identified. There is no specific policy in the adopted Cherwell Local Plan that relates to housing development within the built up limits of Kidlington, and generally, providing that all other material considerations are taken into account and no relative harm exists, the principle of development is generally considered to be acceptable.
- 5.4 Paragraph 35 of the NPPF states that developments should be located and designed where practical to create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians. This aspect will be further expanded later on in the report.
- 5.5 Paragraph 50 of the NPPF requires that local authorities *plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes)*.
- 5.6 Further Paragraph 53 advises that where harm is caused to the local area, the inappropriate development of residential gardens should be resisted.
- 5.7 The general thrust of national policy contained within the NPPF is continued in regional policy, with one of the sustainable development priorities being to ensure the physical and natural environment of the South East is conserved and enhanced. Policy CC6 of the South East Plan 2009 requires decisions associated with the development and use of land to respect, and where appropriate enhance, the character and distinctiveness of settlements throughout the region.
- 5.8 Policy BE1 of the South East Plan 2009 sets out the Plan's approach to promoting and supporting imaginative and efficient design solutions in new development, and aims to increase public acceptance of new housing by making sure that its is of a high quality design that respects local context and confers a sense of place
- 5.9 Policies C28 and C30 of the adopted Cherwell Local Plan relate to all new development and seeks to ensure that it is sympathetic to its context, and the nature, size and prominence of the development proposed, and are compatible with the appearance, character, layout and scale of existing dwellings in the locality and street scene in general.
- 5.10 Policy D1 of the Non-Statutory Cherwell Local Plan 2011 sets out the Council's urban design objectives which seek to ensure that development is compatible with the site's context in terms of its scale, density, massing, height and layout. Whilst Policy D3 seeks to ensure that development reflects or interprets the local distinctive character of the site and its context, by respecting traditional patterns of arrangement, plots and their buildings and spaces and retention and enhancement of existing open spaces and undeveloped gaps of local importance that contribute positively in visual terms to the public realm. The scale, proportion, massing and height of proposed development should be considered in relations to that of adjoining buildings.
- 5.11 Furthermore Policy D6 refers to the consideration of development in design terms

which should be compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity and also that it provides standards of amenity and privacy acceptable to the Council.

#### **Five Year Supply of Housing**

- 5.12 The District cannot currently demonstrate a five year supply of deliverable housing land, with the current supply being 3.2 years (2012-2017).
- 5.13 The short fall was originally reported in the 2011 Annual Monitoring Report (December 2011), which showed that the District had a supply of 2.9 years for the period 2012-2017. This position has been updated on two occasions; firstly an update was presented at a public inquiry in April 2012 to take into account two planning decisions: Cotefield Farm, Bodicote – 82 dwellings and; Yew Tree Farm, Launton – 40 dwellings, which increased supply to 3.1 years. Secondly, in August 2012, the supply was updated to include the resolution made at Planning Committee in the same month to grant permission for further development at Stanton Engineering, Hook Norton – 37 dwellings in total, which increased supply to 3.2 years (2012-2017).
- 5.14 Paragraph 47 of the NPPF requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market for land (or a 20% buffer where there has been persistent under delivery).
- 5.15 Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites.
- 5.16 The proposed development, if shown to be deliverable could contribute to the District moving back to a five year supply.
- 5.17 It is also worth noting here that the NPPF also states (at paragraph 150), that Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities that they must be prepared with the objective of contributing to the achievement of sustainable development and should be consistent with the principles and policies set out in the NPPF.

#### **Principle of development**

- 5.18 It is considered that taking into account the above policies and key issues detailed the site is capable in principle of redevelopment. The main issue, however when considering this current application over the previously refused scheme is whether the three reasons for refusal have been adequately overcome to now consider this scheme as acceptable.
- 5.19 The previous application 12/00460/OUT was refused for the following reasons:
1. The proposal by virtue of the amount of development and its layout represents a crowded, overdevelopment of the site, conflicting with the general character of the surrounding area which would threaten the long term future of the retained trees, which may be lopped or felled by future occupants, because of the level of shading and leaf drop that would affect the dwellings and private gardens.

Furthermore, the crowded layout leaves too little space allocated for suitable replacement tree planting and landscaping which would be required in order to a) mitigate the loss of wildlife habitat b) to provide appropriate screening particularly towards the southern boundary and c) to provide a formal open space area within the centre of the site which will provide for a visual feature as well as an allocated area for replanting. The proposal would therefore be contrary to the provisions of the National Planning Policy Framework requiring good design, delivering a wide choice of high quality homes and conserving and enhancing the natural environment and to Policies NRM5, H5, CC6 and C4 of the South East Plan 2009 and Policies C28 and C33 of the adopted Cherwell Local Plan

2. The proposal by virtue of the amount of development and its layout would be likely to have a seriously detrimental effect on the amenities of the occupiers of the adjacent properties as a result of the level of vehicular activity into the site from The Phelps and also the overdomination and likelihood of overlooking to surrounding properties with a consequential loss of privacy. The proposal is therefore contrary the National Planning Policy Framework requiring good design and delivering a wide choice of high quality homes and Policies CC6, H5, BE1 and BE5 of the South East Plan 2009 and Policies C28 and C30 of the adopted Cherwell Local Plan
3. In the absence of a satisfactory legal agreement, the Local Planning Authority is not convinced that the infrastructure directly required to service or serve the proposed development, including Adult learning facilities, elderly day care resources, community, library and museum facilities, strategic waste, health services and transport measures will be provided. This would be contrary to the National Planning Policy Framework, Policy CC7 of the South East Plan 2009, Policy R12 of the adopted Cherwell Local Plan and Policies OA1, TR4, R8 and R10A of the Non-Statutory Cherwell Local Plan 2011.

5.20 In respect to the first reason for refusal, the applicant has renegotiated the scheme in conjunction with the Council's Arboricultural Officer, where the key elements of concern have been identified and essentially addressed to ensure that the houses are sited away from boundaries. The revised schemes illustrates:

- The provision of a 5m deep planted buffer to the south and west that allows sufficient space for a more manageable hedge/boundary screening to be provided and maintained, ensuring sufficient amenity to neighbouring properties.
- The establishment of a 3m deep planted buffer to the north to further protect the amenity of neighbouring properties.
- Minimum 10m deep rear gardens in addition to the planted buffer zones
- The inclusion of public open space in two prime locations within the site ensures that some green space with trees will be put into the public domain.

5.21 Turning to the second reason for refusal, this relates to the access off The Phelps and potential for overlooking and loss of amenity to neighbouring properties. The revised scheme has reduced the number of units accessed off The Phelps from 10

to 6. Whilst it is accepted that the units are indicated to be larger than previously submitted, in terms of quantum of housing and bedroom numbers this has been reduced. There are now 2 no x 2 bed units and 4 no. x 3 bed units proposed (16 bedrooms total), previously the scheme proposed 3 no. x 2 beds, 5 no. x 3 beds and 2 no. x 4 beds (29 bedrooms total). The specific concern regarding the use of the access off The Phelps was in respect to the volume of traffic and level of vehicular activity into and out of the site from this point of access.

- 5.22 Whilst it is appreciated that there will still be a vehicular and pedestrian activity past the most affected neighbour at no. 67 The Phelps and associated loss of amenity to this occupier, it is considered that the proposed scheme has sufficiently addressed this matter and that there is a significant reduction in the potential volume of traffic based on the quantum of housing and number of bedrooms/occupiers and car ownership/use and therefore the same reasoning for refusal could not be sustained.
- 5.23 In respect to the further loss of amenity in terms of overlooking and over domination in comparison to the previous housing layout, taking into account the points raised in paragraph 5.15, it is considered that the revised layout and positioning of the units retains sufficient distance that will not give rise to those concerns previously raised. The rear gardens are minimum 10m deep and with additional 5m and 3m planted buffers ensure that the minimum 22m window to window distance is maintained in accordance with the Council's guidance and this standard also applies to the distance between all of the proposed units as well.
- 5.24 Whilst the number of objection letters has reduced on this current scheme (at time of writing from 43 objection letters and petition to 18 objection letters), it is acknowledged that there is still some strong opposition and concern to the proposal and that in some respects, will result in harm to the amenity of neighbouring properties. However, it is considered that this harm would not be significant enough to refuse this application on the same grounds previously raised. Consequently it is considered that the principle of development on this site is acceptable and that the revised scheme addresses the previous reasons for refusal and accords with the relevant development plan policies.

#### **Access and highway safety**

- 5.25 The means of access into the site has been submitted for determination at this outline stage. The proposal involves the use of two vehicular access points; one off Nurseries Road and one off The Phelps; two further dwellings will have individual driveways off Nurseries Road.
- 5.26 Concern has been raised by local residents in respect to the use The Phelps as an access point to serve 6 no. dwellings, on the basis that it is narrow, actually measuring 4.3m, instead of the 4.5m stated in the applicant's supporting statement. In a previous response to the concerns raised by residents, the applicant advised that The Phelps can be classified as a major access road and currently serves 138 houses, whilst narrow at the point of access into the site, it could serve up to 25 dwellings. This section of The Phelps, being a cul-de-sac serves 8 no. houses and taking the proposed development into account, it will only give access to a further 6 units. Also in respect to pedestrian/cyclist safety, essentially vehicle speeds will be very low and the road will be treated similar to a shared surface, reducing conflict with users.

5.27 Oxfordshire County Council, as Local Highway Authority has accepted that the proposal in respect to access, parking and highway safety is acceptable in principle, subject to conditions; requiring the width of the new access road from Nurseries Road (which is too narrow) to be altered along with the reversing space internally within the site behind visitor parking space (which must be 6m). On that basis, and despite the level of objection, it is considered that that the proposed means of access off The Phelps to serve 6 no. units and Nurseries Road to serve 5 no. units, is acceptable in highway safety terms. It is further considered that a reason to refuse the application on highway grounds could not reasonably be sustained at appeal without the support of the Local Highway Authority.

### **Neighbour impact**

5.28 The application has been submitted in outline form, with the layout submitted for determination at this stage, and whilst indicative details of scale have been provided to enable the contextualisation of the development, it was the layout that was of previous concern. Of specific concern was the impact the previous proposal would have on the neighbour at no. 67 The Phelps from a traffic disturbance perspective. The front wall of this neighbouring property is only 2m from the road, having no footpath on this particular aspect of The Phelps and bedrooms being on the front.

5.29 However as detailed above in paragraph 5.15 – 5.19 it is considered that the applicant has addressed the previous reasons for refusal and has produced a scheme that :

- 1) Reduces the number of units proposed, thus decreasing the level of vehicular activity into and out of the site;
- 2) Increases the distance between the proposed and existing residential properties to prevent overlooking and loss of privacy;
- 3) Provides sufficient space within the site to ensure that the development has sufficient garden sizes that will not be compromised by the existing trees that are to be retained;
- 4) Provides public open space that will enhance the development from the public realm (approx 550m<sup>2</sup>).

### **Trees**

5.30 Whilst the site is totally enclosed by mature conifers/trees, there are a number of individual trees of significant value, specifically a Blue Atlas Cedar which is within the centre of the site. However, the position of this tree was of considerable constraint and during the negotiation of the revised scheme, the Council's Arboricultural Officer conceded that whilst its loss would be regrettable, its replacement with several smaller trees would benefit the development as it then allows an area of public open space to be included within the site instead. Also the retention of a mature Copper Beech will further enhance the site and would benefit the neighbouring properties along Nurseries Road, but creating an area of public open space. Given that this site has been enclosed by 1.8m high close boarded fencing along its entire length of Nurseries Road, will significantly enhance the character of this immediate locality. Furthermore, the development provides the opportunity to create the necessary wildlife mitigation and enhancement measures suggested by the Council's Ecologist.

5.31 The concern about the close proximity of the proposed houses to the trees has also been addressed as detailed in paragraph 5.15, the retention of some trees along the western boundary that act as a 5m planted buffer together with a new hedge and tree planted along the northern, western, eastern and southern boundaries will provide some boundary screening but will not compromise the garden areas of the proposed dwellings.

5.32 Therefore it is considered that the revised layout addresses the previous concerns raised and overcomes the previous reason for refusing the application.

### **Ecology**

5.33 NPPF – Conserving and enhancing the natural environment requires that “the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures” (para 109)

5.34 Paragraphs 192 and 193 further add that “The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessment) and that Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question”. One of these requirements is the submission of appropriate protected species surveys which shall be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. This is a requirement under Policy EN23 of the Non-Statutory Cherwell Local Plan 2011.

5.35 Paragraph 18 states that “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:  
if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”

5.36 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.”

5.37 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;

- 5.38 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”.
- 5.39 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.
- 5.40 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.
- 5.41 In respect to the application site, a Phase 1 Habitat Survey Report was undertaken by Windrush Ecology.com dated 7<sup>th</sup> March 2012 and the report submitted with the application, which found that there were no bats roosting in the dwelling to be demolished and no roosting opportunities in the trees within the garden. A number of bird species were seen and the trees and shrubs were considered suitable nesting site. There were no other notable protected species found within the site. No further surveys were considered necessary. Mitigation and compensation measures were however recommended in the report, which the Council’s Ecologist has considered and would be recommended should the development be accepted.
- 5.42 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 the National Planning Policy Framework -Conserving and enhancing the natural environment and Policy C2 and C4 of the adopted Cherwell Local Plan.
- Infrastructure contributions**
- 5.43 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. Consultation is to take place shortly.
- 5.44 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.

- 5.45 The applicant has questioned the validity of the Council's SPD and whilst they are willing to enter into an appropriate planning obligation, they seek further justification. This justification has been provided. There is an error in the SPD in respect to LAP provision and as there is a recreation ground close by the applicant is willing to make an offsite contribution instead.
- 5.46 It is considered that the proposed development will give rise to infrastructure or service requirements and therefore is liable for planning obligations.

In this case there is a net gain of 10 no. dwellings comprising: 2 no. x 2 bedroom units, 3 no x 3 bedroom units and 5 no. x 4/5 bedroom units.

Refuse bins and recycling banks - **£675.00**  
 General Transport and Access impacts - **£11,088.00**  
 Libraries - **£640.00**  
 Day care for the elderly - **£2,101.00**  
 Adult learning - **£333.00**  
 Museum resource centre - **£160.00**  
 Strategic Waste Management - **£2,022.00**  
 Outdoor Sports - **£21,856.10**  
 Indoor Sports - **£6,181.20**  
 Off-site contribution to local LAP/Recreation facilities – **£28,468.00**  
 Onsite public open space maintenance - **£546.62**

The total contribution sought from the proposal is **£74,070.92**

Justification for the contributions was requested and has been provided. The third reason for refusal on the previous scheme related to the lack of legal agreement, however, whilst some of the amounts are still being questioned and the agreement has not yet been drafted, the applicant has agreed to the above in principle which will form the Legal Agreement and in general has accepted the requirements of the Planning Obligations sought and has addressed this final reason for refusal.

**Effect on the heritage assets (area of archaeological value)**

- 5.47 Whilst the site is within an area of archaeological interest, Oxfordshire County Council's Archaeologist has recommended the applicant be informed by a planning note about the potential of Archaeological finds during construction.
- 5.48 Whilst not in the Conservation Area, development of the site has the potential to affect its setting, however, it is considered that addressed correctly in terms of materials and scale, there will be no harm to the significance of this heritage asset.

**Conclusion**

- 5.49 In conclusion therefore taking into account the above appraisal it is considered that the current application that has reduced the amount of housing and revised its layout, is now acceptable and complies with the Government guidance contained in the NPPF and the other relevant development plan policies listed above.

## 6. Recommendation

**Approval** subject to:

a) The applicant entering into an appropriate legal agreement to the satisfaction of the District Council to secure financial contributions as outlined in paragraph 5.37 above

b) The following conditions:

1. Approval of reserved matter details - scale, appearance and landscaping
2. Time limit for the submission of reserved matters
3. Time limit for commencement
4. That prior to commencement of any development on the site, notwithstanding the details submitted, an Arboricultural Method Statement (AMS), undertaken in accordance with BS5837 shall be submitted and approved in writing by the Local Planning Authority. All works then to be undertaken in accordance with the agreed document.

Reason - To ensure that no proposed operations impair the health of any retained trees in the interests of the visual amenity of the area, and to comply with Policy C4 of the South east Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

5. No works or development shall take place until a scheme of supervision for the arboricultural protection measures has been approved in writing by the Local Planning Authority. This scheme will be appropriate to the scale and duration of the works and, where relevant, must include details of:

a) the project arboriculturalist employed to undertake supervisory role of relevant arboricultural issues. Applicant / Agent to provide written confirmation and contact details of chosen individual or company.

b) the relevant persons / contractors to be briefed by project arboriculturist on all on-site tree related matters.

c) the timing and methodology of scheduled site monitoring visits to be undertaken by the project arboriculturalist.

d) the procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to agreed tree works and arboricultural incidents.

Reason - To ensure that no proposed operations impair the health of any retained trees in the interests of the visual amenity of the area, and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

6. Prior to the commencement of any works on site or the carrying out of any operation relating to the provision of services, full details of all service trenches, pipe runs or

drains and any other excavation, earth movement or mounding required in connection with the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Submitted in a drawing format, the details must include the identification and location of all existing and proposed trees, load bearing planting pits for hard-surface areas, as well as shrubs and hedgerows within influencing distance of such services. The development shall be carried out in accordance with the details so approved.

Reason - To ensure that the existing tree(s) and/or hedgerows is/are retained in a safe and healthy condition and is/are not adversely affected by construction works, in the interests of visual amenity and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

7. All agreed service trenches, pipe runs, drains or any other excavation to be constructed within the agreed Root Protection Area (RPA) of the tree/trees on the site shall be undertaken in accordance with National Joint Utility Group (NJUG) 'Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity To Trees – Volume 4 and all subsequent revisions and amendments of.

Reason – To ensure that the tree/trees is/are retained in a safe and healthy condition and is/are not adversely affected by construction works, in the interests of visual amenity and to comply with Policy C4 of the South East Plan 2009 Plan 2016 and Policy C28 of the adopted Cherwell Local Plan.

8. That prior to commencement of any development on the site, notwithstanding the details submitted, full details, specifications and construction methods for all tree pits located within soft landscaped areas, shall be submitted to and approved in writing by the Local Planning Authority. Details must also include specifications for the dimensions of the pit, suitable irrigation and support systems and an appropriate method of mulching. The development shall be carried out in accordance with the details so approved.

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.

9. Prior to the commencement of the development hereby permitted details of the provision, landscaping and treatment of open space within the site shall be submitted to and approved in writing by the Local Planning Authority. The open space, once approved shall be landscaped, laid out and completed in accordance with the details approved and within a time period to be first approved in writing by the Local Planning Authority and thereafter retained as open space/play space.

Reason - In the interests of amenity, to ensure the creation of a pleasant environment for the development with appropriate open space and to comply with Policy BE1 of the South East Plan 2009 and Policy R12 of the adopted Cherwell Local Plan.

10. Development shall not commence until a surface water and foul sewage drainage scheme and strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of any building to which the scheme relates. All drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".

Reason - The development may lead to sewage flooding; to ensure that sufficient capacity is made available to cope with the new development; and in order to avoid adverse environmental impact upon the community in accordance with the guidance contained within the National Planning Policy Framework and Policy NRM4 of the South East Plan 2009 and Policy ENV1 of the adopted Cherwell Local Plan.

11. The development hereby permitted shall be carried out in accordance with the recommendations set out in Phase 1 Habitat Survey Report by Windrush Ecology Ltd dated 7<sup>th</sup> March 2012 unless otherwise agreed in writing by the Local Planning Authority.

Reason - To protect habitats of importance to nature conservation from any loss or damage in accordance with the guidance contained within the National Planning Policy Framework and Policy NRM5 of the South East Plan 2009 and Policy C2 of the adopted Cherwell Local Plan.

12. Notwithstanding the recommendations and mitigation measures detailed in the Habitat Survey detailed in condition no. 10, development shall not commence until a biodiversity enhancement scheme has been submitted and approved by the Local Planning Authority. The biodiversity enhancement scheme shall detail:

- a) the measures to be taken to ensure the development proceeds in a sensitive manner with regards to bats, birds and hedgehogs (as stated in the Phase 1 Habitat Survey report).
- b) the biodiversity enhancement features to be incorporated within the new dwellings and/or around the site (eg bat boxes/tubes, bird boxes). The scheme is to specify the number proposed, type and exact locations.
- c) the existing areas of trees and planting to be retained and how these will be protected during the construction phase.
- d) the proposed planting scheme for public and private areas (recommendations as to suitable species are made in the Phase 1 report).

Reason - To protect habitats of importance to nature conservation from any loss or damage in accordance with the guidance contained within the National Planning Policy Framework and Policy NRM5 of the South East Plan 2009 and Policies C2

and C4 of the adopted Cherwell Local Plan.

13. A Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The CEMP shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site and shall include details of the consultation and communication to be carried out with local residents. Construction work shall thereafter be carried out in accordance with the approved CEMP.

Reason - To protect the amenities of the local residents, to avoid pollution and to comply with Policy ENV1 of the adopted Cherwell Local Plan.

14. 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, in respect of those dwellings which it is intended shall be screened, shall be erected prior to the first occupation of those dwellings.

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.

15. 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: 05, 06 and 10.

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

16. That, notwithstanding the provisions of Classes A to E (inc.) of Part 1, of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, the approved dwelling(s) shall not be extended (nor shall any structures be erected within the curtilage of the said dwelling(s) without the prior express planning consent of the Local Planning Authority.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the amenities of the occupants of the adjoining dwellings in accordance with Policies C28 and C30 of the adopted Cherwell Local Plan.

17. That, notwithstanding the provisions of Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 and its subsequent amendments, the garage(s) shown on the approved plans shall not be converted to provide additional living accommodation without the prior express planning consent of the Local Planning Authority.

Reason - To ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway in accordance with Policy T4 of the South East Plan 2009.

18. That, before any of the dwellings are first occupied, the proposed vehicular accesses, driveways and turning areas that serve those dwellings shall be constructed, laid out, surfaced and drained in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with government guidance contained within the National Planning Policy Framework

- 19 That no surface water from the development shall be discharged onto the adjoining highway and a scheme to prevent this occurrence shall be submitted to and approved in writing by the Local Planning Authority and constructed prior to the commencement of building operations.

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

20. That the footway on The Phelps (immediately south of proposed site access) must be improved to OCC specification prior to first occupation.

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

21. Prior to first occupation, a copy of the residents' Sustainable Travel Information Packs must be submitted for consideration and approval. The approved packs must be provided to each residence upon first occupation.

Reason - In the interests of encouraging sustainable modes of travel and to comply with government guidance contained within the National Planning Policy Framework

22. Prior to the commencement of the development hereby permitted a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model shall be carried out by a competent person and in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*' and shall be submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.

23. If a potential risk from contamination is identified as a result of the work carried out under condition 22, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'* and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.

24. If contamination is found by undertaking the work carried out under condition 23, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'* and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.

25. If remedial works have been identified in condition 24, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition y. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan.

**Planning Notes**

1. Archaeology
2. Thames Water informatives
3. Ecology
4. Construction sites
5. Works within the Highway

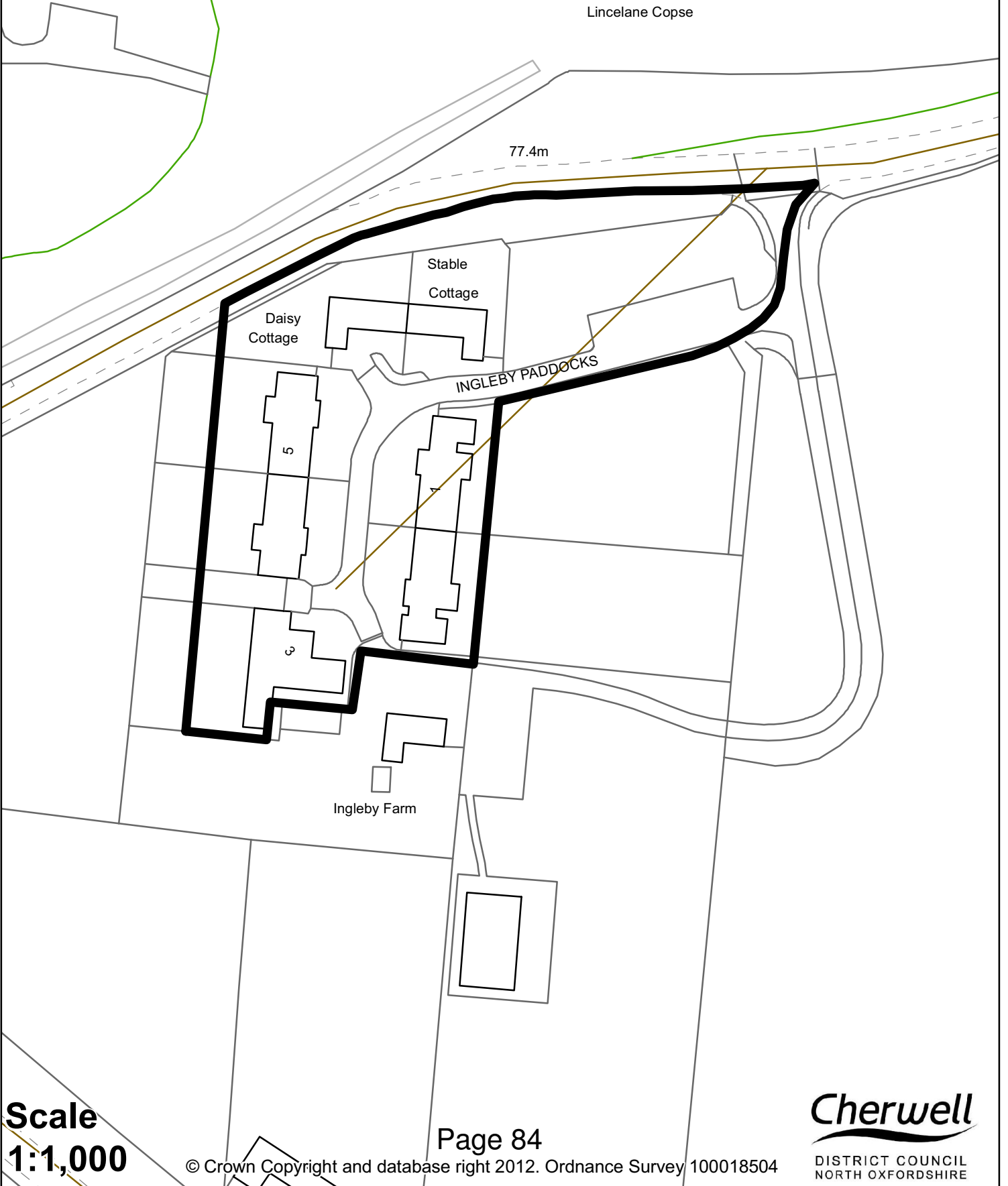
**SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES**

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 being of a layout appropriate in its context and will not have a detrimental effect on the neighbouring residential amenities. It will not cause harm to the visual amenities of the locality, acknowledged archaeological interests or other heritage assets, highway safety or ecology. The proposal, therefore, complies with government guidance contained in the National Planning Policy Framework, Policies CC1, CC4, CC6, CC7, T1, T4, C4, BE1, BE5, BE6, H1, H2, H4, H5, S6, CO1, CO5 and NRM5 of the South East Plan 2009; Policies C2, C4, C23, C28, C30 and TR1 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 outline planning permission granted subject to appropriate conditions, as set out above.

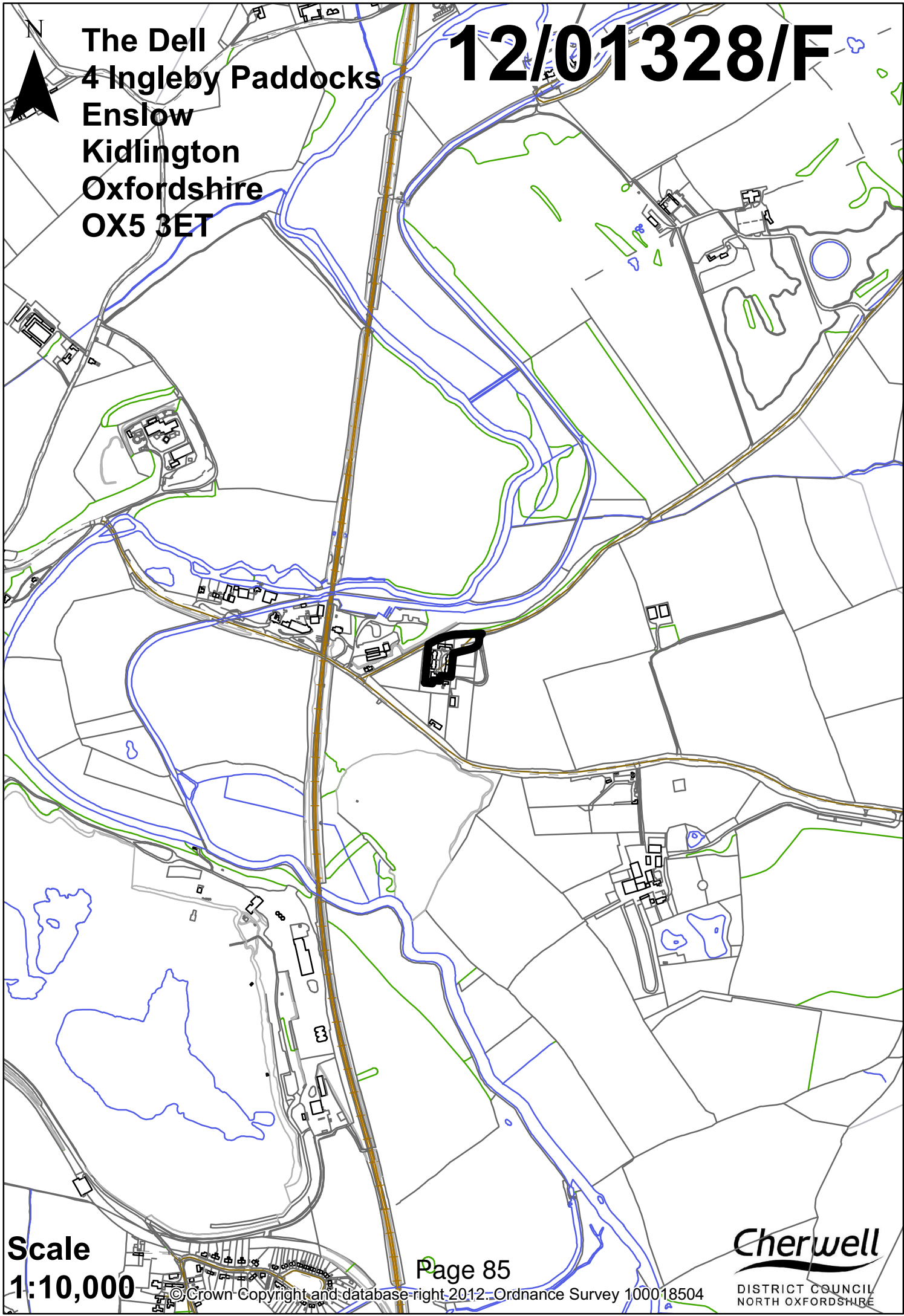
**CONTACT OFFICER:** Tracey Morrissey**TELEPHONE NO:** Ext 1812



4 Ingleby Paddocks  
Enslow  
Kidlington  
Oxfordshire  
OX5 3ET



Scale  
1:1,000



**The Dell  
4 Ingleby Paddocks  
Enslow  
Kidlington  
Oxfordshire  
OX5 3ET**

**12/01328/F**

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***Cherwell***  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

# The Dell, 4 Ingelby Paddocks, Enslow 12/01328/F

Ward: Kirtlington

District Councillor: Cllr Holland

Case Officer: Tracey Morrissey

Recommendation: Refusal

Applicant: Mr and Mrs Lucas

**Application Description:** Removal of conditions 11 of 08/01239/F and 12 and 14 of 07/01242/F and 13 06/00762/F

**Committee Referral:** Previous schemes on this site determined by Committee

## 1. Site Description and Proposed Development

- 1.1 This application relates to the live/work development of 7 units at this site of the edge of Enslow, close to the junction of the A4095 from Kirtlington and the B4027 from Bletchington. The site is within the open countryside and just outside the Oxford Green Belt, with the B-road forming the boundary.
- 1.2 This development was granted consent by Planning Committee in its present form in 2006 under 06/02334/F following the granting of outline consent 05/00535/OUT, by Planning Committee (contrary to officer recommendation), which established the principle of the live/work development on this former kennels site.
- 1.3 The planning permission was subject to four conditions which restricted the occupancy of the units so that they would remain as a live/work development. These conditions and their subsequent amendments were considered reasonable and necessary as the provision of living and working space within a single unit was considered to be a sustainable form of development since it would restrict the need to commute to the work place. Also the development would provide live/work units to a range of sizes which could be re-cycled into the local housing market where dwellings of the size proposed are rarely available due to the adopted policies of restraint.
- 1.4 Consent is sought for the removal of the four conditions which restrict the occupancy of the development. The conditions to be removed read as follows:
- 1.5 *Condition no. 11 of 08/1239/F*  
*The residential floorspace of the live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower of such a person, or any resident dependents. ( NO REASON PROVIDED ON APPEAL)*
- 1.6 *Condition no. 12 of 07/01242/F*  
*The work space element hereby permitted shall not be the main place of employment for more than two full time equivalent workers whose sole or main residence is outside its related residential unit*

*REASON: To ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway and also to reduce the amount of traffic generation to accord with sustainable development and transport*

*considerations in accordance with Policies T1, T2 and T8 of the Oxfordshire Structure Plan 2016 and Policy TR5 of the adopted Cherwell Local Plan*

1.7 *Condition no. 13 of 06/00762/F*

*The floorspace of each live/work unit set aside for commercial purposes shall be in accordance with the details included with this application and shall only be used for such purposes and shall not be incorporated into the residential space at any time.*

*REASON : This consent is only granted in view of the special circumstances of this particular proposal which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent, in accordance with Policy H18 of the adopted Cherwell Plan*

1.8 *Condition no. 14 of 07/01242/F*

*The use of the work space of each unit on the development shall be limited to uses within Class B1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).*

*REASON: In order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises in accordance with Policy G2 of the Oxfordshire Structure Plan 2016*

## **2. Application Publicity**

- 2.1 The application has been advertised by way of neighbour letter and site notice. The final date for comment was the 5<sup>th</sup> November 2012. No correspondence has been received as a result of this consultation process.

## **3. Consultations**

- 3.1 **Bletchington Parish Council:** No comments received

### **Oxfordshire County Council Consultees**

- 3.2 **Highways Liaison Officer:** No objections raised. The removal of condition application appears to seek to remove the restriction on the existing live/work units, and permit the site to have full residential use. It would therefore appear that this specific application (12/01328/F) has no highway impact.

I do acknowledge that the site is not accessible by footways, public transport etc, and hence is not an ideal location for new development without the provision of supporting sustainable travel infrastructure. However the units *are* existing, and if their use reverts to purely residential (rather than residential and commercial) this may mean that trips to the site will decrease.

## **4. Relevant National and Local Policy and Guidance**

### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan (Saved Policies)  
EMP4: Employment generating development  
H18: New dwellings in the countryside

South East Plan 2009  
RE3: Employment and land provision

CC1: Sustainable development  
CC6: Sustainable character  
H4: Housing type and size  
H5: Housing design

## **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

Cherwell Local Plan - Proposed Submission (August 2012)

The Local Plan (August 2012) has recently completed the period of public consultation. Although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

SLE1: Employment development  
ESD16: Character of the built environment

Non-Statutory Cherwell Local Plan 2011

In December 2004 the Council resolved that all work to proceed towards the statutory adoption of a draft Cherwell Local Plan 2011 be discontinued. However, on 13 December 2004 the Council approved the Non-Statutory Cherwell Local Plan 2011 as interim planning policy for development control purposes. Therefore this plan does not have Development Plan status, but it can be considered as a material planning consideration. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

EMP4: Employment generating development  
EMP5: Protection of existing employment sites  
H19: New dwellings in the countryside

## **5. Appraisal**

5.1 The key issues for consideration in this application are:

- Relevant Planning History
- Live/work concept
- Applicant's case for removal of the conditions
- Principle reasoning why the conditions are still necessary and relevant

### **Relevant Planning History**

5.2 The site has considerable history as detailed below, but Members will see that on four separate occasions applications have been submitted to vary and remove the restrictive conditions subject to this current application. The conditions detailed in paragraphs 1.3 – 1.6 are those currently in force.

Application no.	Description	Decision	Decision Date
08/01298/F	Application to vary condition no 11 and 14 and removal of condition no. 12 of permission 06/00762/F	Withdrawn	11/08/2008
08/01239/F	Application to remove and amend condition no 11 of permission 07/01242/F	Refused <b>Allowed on appeal</b>	11/08/2008 <b>26/01/2009</b>
08/00442/F	Change of use from paddock to form enlarged domestic gardens for plots 1 - 4 and 6 - 7 inclusive.	Permitted	07/05/2008
08/00250/F	Application under section 73 of the act to vary conditions no. 13 of permission 06/00762/F, to enable provision of a third bedroom to plot nos. 4 and 5	Refused	29/04/2008
07/01791/F	Demolish existing farmhouse. Erect 2 storey dwelling and detached garage	Permitted	06/11/2007
07/01242/F	Application to vary conditions nos. 11 and 14 and removal of condition no. 12 of permission 06/00762/F	Permitted	05/10/2007
06/02337/F	Demolition of existing dwelling and construction of replacement dwelling	Withdrawn	01/03/2007
06/02334/F	Demolition of kennels workshop. Erection of replacement building as office/studio ancillary to farmhouse and covered walk-way. Change of use of area of kennels workshop to office accommodation ancillary to domestic dwelling	Permitted	06/03/2007
06/00762/F	Demolition of kennels. Construction of 7 no. new dwellings each with integral B1 office/craft unit and construction of new access (as amended by drawings received 31.08.06). <b>NB : Siting and size of development changed from the outline consent and therefore application was considered as a full rather than reserved matters</b>	Permitted	27/03/2007
05/00535/OUT	OUTLINE: Demolition of kennels. Construction of 7 no. new dwellings each with integral B1 Office/craft unit on kennel site and part of adjacent paddock land. Extension of existing farmhouse, and conversion of existing workshop to B1/craft unit and domestic garage. Construction of new access, as permitted by permission 03/00586/F, and access drive in amended position (as amended by drgs 03/03.26 Rev A received 21.07.05 and 03/03.28 received 11.07.05). <b>Original consent</b>	Permitted	05/12/2005
03/00586/F	Change of use of land and demolition of existing kennels and construction of new kennels, cattery and ancillary building. Re-siting and construction of new access to highway (as amended by revised access plans received 23.05.03 and revised elevations received 19.05.03 and as amplified by additional plans received 15 May 2003).	Permitted	30/05/2003

### **Live/work concept**

- 5.3 The concept of live/work was quite new to this authority when Members granted an outline consent in September 2006, however, it is gaining in popularity in other parts of the country, especially so in urban areas. The benefit of live/work is the contribution to a more environmentally sustainable way of life, however it should be noted that live/work is different from 'home working' which usually comprises a residential unit with ancillary and often temporary or informal work areas. Live/work is a distinctive and formal division of residential and workspace floorspace within the same unit.
- 5.4 It is worth noting that officers raised concern back in 2006 over a form of development, which seemed to provide large family homes, thus in favour of the residential aspect of the unit more than the work unit, which then raised a suspicion that the live/work scheme could be used as a backdoor route to avoid the otherwise strictly controlled regime which prevents residential development in the open countryside.
- 5.5 Five years on and following their occupation, it is evident from the applicant's submission, that the business element of this live/work development is totally overshadowed by the residential element, with the emphasis on family homes rather than business use. Also when Members approved the development in 2006 there was no requirement for the developer to provide any footpath links to the other built development in Enslow, therefore the site is not only totally divorced from Enslow but there is no safe footway residents can walk along to catch the bus or go to the pub. This is particularly a problem with the children catching the bus to school as the bus will not pick up/drop off from the entrance to the houses.

### **Applicant's case for removal of the conditions**

- 5.6 The applicants have submitted a substantial document to support their application which includes the following items:
- Marketing details/reports from Estate Agents together with letters from the agents advising in their opinion why the properties have not sold and why no interest.
  - Evidence of sale prices of houses in nearby villages – approx £250K more than those currently on the market for at Ingleby Paddocks but of a similar size and type (4 bed house sold in Kirtlington for £995K – 3 bed house still unsold at Ingleby Paddocks on market for £675K)
  - Mortgage rejection letters and reasons why no re-mortgage would be forthcoming.
  - Current bus timetable - earliest bus 09.33, then at 2 hour intervals with last bus at 14.17 back to Rock of Gibraltar
  - Correspondence with OCC regarding school transport that will not collect from the entrance to the site and arrangements via a taxi service to and from school
  - Map showing location of Rock of Gibraltar and site off A4095 (50mph) and no footpaths

- Letter to CDC regarding lack of signage warning of development entrance
- Letter of support from another resident advising of similar problems faced, ie mortgage availability, inability to sell property, business practicality and lack of infrastructure. This property is and has been on the market since 2010.

5.7 In addition to the above the applicant has advised of the following reasons why the live/work concept at Ingleby Paddocks does not work and how this has had a detrimental impact on their family life and working life and how they are struggling to co-exist on a site that was designed for just this form of living and working:

- 1) place unjustifiable burdens on us as a business and as a family and are therefore unreasonable;
- 2) the conditions are so onerous that they put severe limitations on our freedom as owners to dispose of our property or finance the property;
- 3) the conditions are not effective as they are difficult to enforce
- 4) removal of the conditions would not be harmful to the character appearance of the rural landscape as no changes to the external appearance of the building would be required;
- 5) the work element of the live/work arrangement is not sustainable
- 6) consider that the planning conditions referred to in this application therefore compromise their rights under Article 8 of the Human Rights Act 1998.

5.8 Notwithstanding the above, it is considered that the full facts of the applicant's case are put before Members to ensure that a complete picture of how in reality the live/work scheme is operating, before this current application is determined.

5.9 Mrs Lucas is a chartered accountant and has been running her accountancy practice from the property since purchasing it in October 2007, she lives there with her husband and three sons aged 15, 12 and 7. Mr and Mrs Lucas bought this property fully embracing the idea of 'live/work'. However the nature of the build and its location together with the change in the economic and financial climate over the past 5 years, have led them to believe that live/work in this development is not sustainable. They feel completely trapped at this present time. Due to the planning conditions, Mrs Lucas cannot grow her business, and they cannot get finance and cannot sell the property.

5.10 Mrs Lucas advises that the nature of the site and the size of the units have attracted families with children. There are in fact now 10 young children living on the site. This has caused tension within households and between occupiers as the mix of children and business has not worked. The development itself is a relatively safe environment for children to play outside but this is not conducive with people trying to run a B1 business. The noise from children playing outside is often intrusive, disturbing and therefore unprofessional from a business aspect. Children are asked to restrain their normal childhood behaviours (laughing, squeeling, shouting, crying etc) to

comply with the businesses working from the site. This is an infringement of children's rights and causes problems within and between families. In addition, visitors to the site do not expect to see young children playing outside and safety of the children from approaching vehicles is compromised.

- 5.11 There is no infrastructure to support a business environment. There is no regular bus service and there are no pavements leading from the development for travel by foot or cycle. When they purchased the property in 2007, the development was not complete. They expected paths and public transport to follow, but this has not materialised. In the recent Planning Application No 11/01146/OUT for the outline permission to demolish the existing bungalow and disused cattery buildings at the nearby 'By Ingleby' site, it is noted that the Planning Officer makes a comparison with Ingleby Paddocks which is described as 'being in the open countryside, in a remote location with a general lack of services and facilities, inaccessible by public transport'.
- 5.12 The main office space is situated on the first floor. Mrs Lucas runs her business from the first floor which is not accessible for disabled clients; therefore any business conducted with disabled clients has to be carried out in the residential area which is accessible. Their children tend to use the business areas outside office times for doing homework, playing music and computer work.
- 5.13 The office space is integral to the house and although there is a separate entrance for business use, in practice and because of the layout of the property, the business entrance is also used as the main entrance to the residential part of the house. There is free access between residential and business areas and family and business personnel are able to freely move between both. The business area is therefore very integral to the residential area. The soundproofing is very much that of a residential property and it is very easy and also very unprofessional to hear noise from the residential area in the business area and visa versa. Mr Lucas started to use some of the upstairs office space in March 2009 for his own business. However by May 2009 he had to find alternative office premises because it was impossible for him to carry out his normal office duties due to the noise and interruption from our own children and our neighbours' children.
- 5.14 The heating and lighting are controlled by one system that is located in the utility area. There is no separation of utilities. This means the heating of the business area continues even when the business area is not in use i.e. evenings and weekends and visa versa, during office hours the whole property has to be heated in order to heat the business area. This is not only costly but also environmentally unacceptable.
- 5.15 The fact is there are no regular public transport links to this site. All visits to and from the site have to be by motor vehicle. There is no transport infrastructure to support a working or living environment. There was no requirement on the developer to provide pavements to or from the site and the Local Transport Department, have not provided for any pavements.
- 5.16 Mrs Lucas has tried to expand her business by recruiting school and university leavers to become trainee accountants, (which is the normal method of expansion), but they are unable to get to the site by public transport and the site is too remote to travel by foot or cycle. This evidence shows that this site is not supported by the infrastructure and as she is unable

to recruit trainees to expand her business, it is no longer viable for her to run the accountancy practice from these premises. She needs to expand to survive and cannot do it here.

- 5.17 Transport considerations for this site are not just about the work element. The residential element as already stated is in practice more than 80% of the property and is a family home. The nearest school bus stop for Marlborough school, Woodstock (the catchment school for this site) is the Rock of Gibraltar public house. Mrs Lucas has asked for the school bus to stop outside the development but have been told it is too dangerous for a bus to stop! There are no pavements between the Rock of Gibraltar and Ingleby Paddocks and it is very unsafe for adults let alone children to walk as the roads are very busy and very fast. The school initially arranged for her eldest son to be collected from home by taxi but this led to all sorts of problems (taxis not turning up, turning up late, her son being teased at school and called names like 'Taxi Boy' to name but a few). She therefore has no option but to take her three sons to and from school by car.
- 5.18 It has not been possible to re-cycle any of the units 'back into the market' as the properties cannot be sold. The applicant's property has been marketed with two agents at a very reasonable price which reflects the commercial element, since October 2011. The property has been actively marketed in all local property papers and on the national and international property web sites. Despite this extensive marketing only 3 viewings have occurred in 11 months and no serious interest has been forthcoming. Feedback from estate agents is that there is regular and multiple initial interest in the property but there is no follow through which they attribute to the Planning conditions referred to in this application. Recently, properties in nearby Kirtlington of a similar size but 100% residential have been quickly sold at prices 25% greater than those at Ingleby Paddocks.
- 5.19 In addition to the onerous planning conditions, lack of interest is attributed to the difficulty in obtaining finance in the current economic climate. As mentioned previously, due to the business element of the property, most lenders will not consider a residential mortgage. Commercial lenders apply such varying and restrictive conditions, that it almost now impossible to find a lender. The applicant's have recently contacted a number of major mortgage lenders (as recommended by live/work web sites) and have found that none are prepared to advance loans on the property because of the commercial element. Commercial loans are extremely hard to find in the present economic climate and commercial lenders are unwilling to lend over a normal mortgage term. Providers of commercial finance expect a commercial liability to be met by the profits of the business occupying the premises within a period of 10-15 years. This is not reasonable when considering more than 75% of the value of the property is residential. A commercial lender will not take into account a spouse's income as the spouse has no involvement in the business. A combination of residential mortgage and commercial mortgage for the two different elements cannot be obtained because their property is under residential title deed. This makes it almost impossible for prospective purchasers to obtain finance to purchase the property and also places Mrs & Mrs Lucas in an impossible financial trap.
- 5.20 The applicant's consider that Condition 11 places unjustifiable burdens on them as a business and as a family. In addition this condition is now so onerous that it puts severe limitations on their freedom as owners to dispose of their property or finance the property. They consider that this is in direct

conflict with the advice given in Circular 11/95 paragraphs 14, 35 and 36 and is unreasonable.

- 5.21 The applicant's also consider that condition 12 also fails the test of reasonableness. It not only attempts to restrict the number of people that may be employed in the business, it also attempts to restrict commuting by car and therefore the number of clients that may visit the site.
- 5.22 The reason for this condition relates to car parking. The conventional approach is to require the provision of spaces commensurate with floor space. The applicant's understanding is that there are no circumstances that would justify the local planning authority endeavouring to restrict the number of persons who may be employed in a business. They argue that the number of persons employed in a business has no relevance to planning and is in direct conflict with the advice in paragraph 20 of Circular 11/95. Also cited is the *Newbury* tests, whereby the Courts have held that for a condition to be valid it must be imposed for a "planning" purpose and not any ulterior purpose, and that it should not be so unreasonable that no reasonable planning authority could have imposed and is therefore *ultra vires*. The applicant's contend that this condition is unlawful.
- 5.23 In addition they consider that this condition is only enforceable with constant and permanent surveillance, since vehicles of all visitors, be it employees, clients, friends or family to the business or any of the other 6 properties, are required to park in the common parking area. It would be impossible for any enforcement officer to determine which vehicle was associated with which property without constant surveillance. The cost of such enforcement would not be in the public interest.
- 5.24 The applicant's consider that Condition 13 was imposed to justify the special circumstances of the proposal and to control the occupancy of the properties. It is not clear exactly why the special circumstances were considered to be justified at that time, since the main thrust of policy H18 of the Cherwell Local Plan (1996) seems to support the construction of new dwellings beyond the built-up limits of settlements only where they are essential for agricultural or other existing undertakings (which was not the case on this site) and other policy requirements are satisfied. Similarly, saved Policy EMP4 supported proposal for employment generating developments in rural areas only in specific circumstances which did not seem to apply in this case. The application was not supported by the Planning Officer (as confirmed in the Recommendation to the South Area Planning Committee dated 4 October 2007).
- 5.25 Furthermore the applicant considers that it is totally unreasonable that rooms integral to the main residential areas cannot be used outside business hours. This would not happen in other business premises where the owner would have more freedom to use their property as they chose.
- 5.26 Mrs Lucas has found that the integral design of the property means that clients become unwittingly involved in the domestic side and she often feels uncomfortable when clients visit the premises and comment about the children and her home as this feels unprofessional.
- 5.27 Consequently the applicant's consider condition 13 only to be enforceable with constant and permanent internal inspection. As you can already see, certain areas of the residential area are used for business use at different

times and visa versa certain areas of the business area are used for residential use both during normal working hours and outside normal working hours.

- 5.28 In respect to Condition 14, this was imposed in order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises. It is considered that the removal of this condition to enable use of the workspace areas for living accommodation would not give rise to any change to the character of the area nor the amenities of the occupants of the adjoining premises. Indeed it is considered that full residential use of the building would have much less of an impact on amenity than the B1 use approved under the original application. Accordingly, the removal of condition 14 is considered to be acceptable.
- 5.29 The applicant's ask the LPA to give consideration to the Communities and Local Government Consultation Paper April 2011 'Relaxation of Planning Rules for change of use from commercial to residential' which sought to obtain views on the Government's proposals to amend the Town and Country planning (General permitted Development) Order 1995 to grant development rights to change of use from commercial to residential use i.e. to allow such changes without the need for planning applications. They understand that The Minister of State for Decentralisation and Cities, Greg Clark has now unveiled firm proposals following this consultation.
- 5.30 The key proposal of this consultation was to introduce permitted development rights to allow changes of use from B1 to C3 to happen freely without the need for planning applications where no changes to the exterior of an existing building is required. Clearly the Government believes there is a strong case for such changes to be made and to allow permitted development rights to be tailored to local circumstances. Although this is to encourage the more efficient use of brown field land and bring disused buildings into housing stock, the general principles do seem to give support to this case.
- 5.31 In conclusion the applicant's purchased 4 Ingleby Paddocks 5 years ago fully embracing the live/work concept. Due to the changes in the economic climate and the general unsustainability of the site, they are now trapped by the planning conditions which mean they cannot continue to live and work in the property but cannot sell and move on either. They believe that Condition 11 should be removed as it is now unreasonable and not sustainable. That they have demonstrated that they have made all reasonable efforts to sell their property and re-cycle it into the market. It places unjustifiable burdens on them as a business and as a family. In the current economic climate, it is in direct conflict with the advice given in Circular 11/95 paragraphs 14, 34, 35 and 36 and is in breach of their rights under Article 8 of the Human Rights Act 1998.
- 5.32 Condition 12 should be removed as it is not relevant to planning, is unreasonable and unenforceable and in direct conflict with Circular 11/95 paragraph 14, 20, 26 and 27
- 5.33 Condition 13 should be removed as it is unenforceable and in direct conflict with Circular 11/95 paragraphs 26 and 27.
- 5.34 Condition 14 should be removed as it's removal would not result in any detrimental impact on the amenity of the locality or that of local residents or on highway safety.

**Principle reasoning why the conditions are still necessary and relevant**

- 5.35 This current application seeks to remove the four restrictive conditions on the grounds that they fail the test of validity for the imposition of planning conditions as set out in Circular 11/95 “The use of Conditions in Planning Permission”. This Circular advises that as a matter of policy, conditions should only be imposed where they satisfy all of the six tests:
1. necessary;
  2. relevant to planning;
  3. relevant to the development to be permitted;
  4. enforceable
  5. precise; and
  6. reasonable in all other respects
- 5.36 The rationale of the original and amended conditions is still considered to be reasonable and necessary in order to control these units; however, the exact wording of the conditions has been challenged over the last few years and when condition no. 11 was further examined at the 08/01239/F appeal, the Inspector found that part of the condition (11b) was unlawful and was in direct conflict with the advice in paragraph 20 of Circular 11/95 that conditions affecting land ownership would be *ultra vires*, given that the ownership of land has no relevance to planning. Whilst the Inspector allowed the appeal, she substituted a new clause 11 based on model conditions in Circular 11/95 relating to staff accommodation and agricultural dwellings (as detailed in paragraph 1.3).
- 5.37 The Inspector noted in paragraph 8 of the Appeal that the original permission had been granted as an exception to the normal policies of restraint for two reasons. Firstly, the provision of living and working space within a single unit was considered to be a sustainable form of development since it would restrict the need to commute to the work place. Secondly the proposal would provide live/work units to a range of sizes which could be re-cycled into the local housing market where dwellings of the size proposed are rarely available due to the adopted policies of restraint.
- 5.38 In reaching her conclusion, the Inspector states in paragraph 19 of the Appeal that:
- ‘the new condition could result in the business floorspace being unoccupied until such times as new occupiers are found for the whole of the live/work unit. However condition 12 on application 06/00762/F prevents the business floor space being incorporated into the residential accommodation. In the event of the business use ceasing, the restrictions imposed by these conditions would be an incentive for the occupiers of the residential accommodation to move elsewhere, were they able to sell the property. In addition, the live/work units are subject to business rates and purchasers would probably require a commercial mortgage. This would be a financial disincentive to occupying the residential floorspace but leaving the business floorspace vacant. The restrictive conditions combined with financial considerations I have identified would result in the live/work units being re-cycled into the local market within a reasonable period’*
- 5.39 Whilst the Inspector found that the original Condition no. 11 to be unreasonable, she referred to the other restrictive conditions that would prevent the live/work unit becoming totally residential. Those other restrictive conditions were never challenged at appeal. It should be emphasised that the

property is not just a home it is a place of work and in normal business terms, should unfortunate circumstances occur, businesses do cease and the necessary arrangements have to be made. The fact that the development was built as family homes was accepted by the Council as it was considered that this would provide a flexible living and working arrangement should the occupiers have a family. That said, the case put forward by the applicants clearly sets out that whilst unfortunate circumstances occur, they find themselves trapped despite their attempts to move on. Also, whilst built as family homes, the applicant has found that the fact that children are on the site does not always work in a professional working environment, clearly on any housing estate children play and people do work from home, but from their experience the applicant's have found that children and employment in the same working space has a very real and negative impact on the business.

5.40 This is a very finely balanced case and whilst the applicant's and her one neighbour's circumstances are appreciated, at the time of writing no other letters have been received from their other 5 neighbours and it may be the case that they are perfectly happy and have no problem with the situation. However, as the red line of the application submission is around the whole development, Members are being asked to consider removing the restricting conditions for the entire development.

5.41 It may be the case that if Members are minded to approve this application, it could be just applied to the applicant's property, no. 4 The Dell and her neighbour no. 5 Hawthorn House and as such time the other neighbour's circumstances equate to that of the applicant's a further application could be made and duly considered. This is the usual approach taken when applications are made to change the use of business premises to residential under EMP5 of the Non-Statutory Cherwell Local Plan 2011, which is echoed in Policy SLE 1 of the Proposed Submission Local Plan (August) 2012. These policies read as follows:

**EMP5 Protection of Existing Employment Sites** (Non-Statutory Cherwell Local Plan 2011)

**THE CHANGE OF USE OR REDEVELOPMENT OF AN EXISTING EMPLOYMENT SITE WITHIN OR ADJOINING A VILLAGE TO A NON-EMPLOYMENT USE WILL NOT BE PERMITTED UNLESS:**

**(i) THERE WOULD BE SUBSTANTIAL AND DEMONSTRABLE PLANNING BENEFIT; OR**

**(ii) THE APPLICANT DEMONSTRATES THAT EVERY REASONABLE ATTEMPT HAS BEEN MADE TO SECURE SUITABLE EMPLOYMENT RE-USE.**

The following explanatory text is also considered relevant to this case:

4.79 In recent years, a number of employment sites in the rural areas have been redeveloped for non-employment uses, primarily housing. Whilst such redevelopment can add to the rural housing stock, it results in a loss of local employment opportunities.

4.80 This policy seeks to give some protection to existing employment sites, in recognition of Government objectives to promote "living and

working communities”, offering a range of housing and employment opportunities and making villages more sustainable.

- 4.81 Clause (i) of the policy recognises that on occasions there may be planning benefit in allowing the redevelopment of an employment site for a non-employment use. For example, the surrounding road network may be unsuitable for the level or type of traffic generated, or likely to be generated, by employment use of a site. In some instances employment use may not be considered compatible with adjacent residential use, and redevelopment to residential may be considered more appropriate in order to protect residential amenity. However, where this is not the case, the Council will expect a planning application to be accompanied by evidence to demonstrate that every reasonable attempt has been made to secure suitable re-use for employment purposes. This should normally include evidence from the applicant that the property or business has been advertised for sale or for rent for not less than 12 months.

**Policy SLE 1: Employment Development** (Proposed Submission Local Plan August 2012)

Where an applicant wishes to change the use of an employment site proposals will be considered with regard to the following criteria:

- Whether the location and/or nature of the present employment activity has an unacceptable adverse impact upon adjacent residential uses
- Whether the applicant can demonstrate that an employment use should not be retained
- Whether the applicant can demonstrate that there are valid reasons why the use of a site for the existing or another employment use is not economically viable
- Whether there are other planning objectives that would outweigh the value of retaining the site in an employment use and where the applicant can demonstrate that the proposal would not have the effect of limiting the level of provision and quality of land available for employment in accordance with policies in the Local Plan.

- 5.42 As stated before this is a finely balanced case and as demonstrated by the applicant's submission, whilst businesses can operate from the site, the conditions restrict future growth, there is conflict with family life and also the ability to refinance the development or indeed actually sell the property so that it can be recycled into the market. Furthermore, the occupants are dependant on their car, having no footpath from the site to the nearest public transport stop or pub which renders pedestrians at harm from oncoming traffic.

- 5.43 With regards to the Human Rights Act. Article 8 states that everyone has the right to respect for his private and family, his home and his correspondence. This right is not absolute and a public authority can interfere with this right provided it is proportionate and necessary. The Council in this case consider it is necessary. Also, a business does not enjoy this right so it only applies to the "live" part of these units.

## **6. Conclusion**

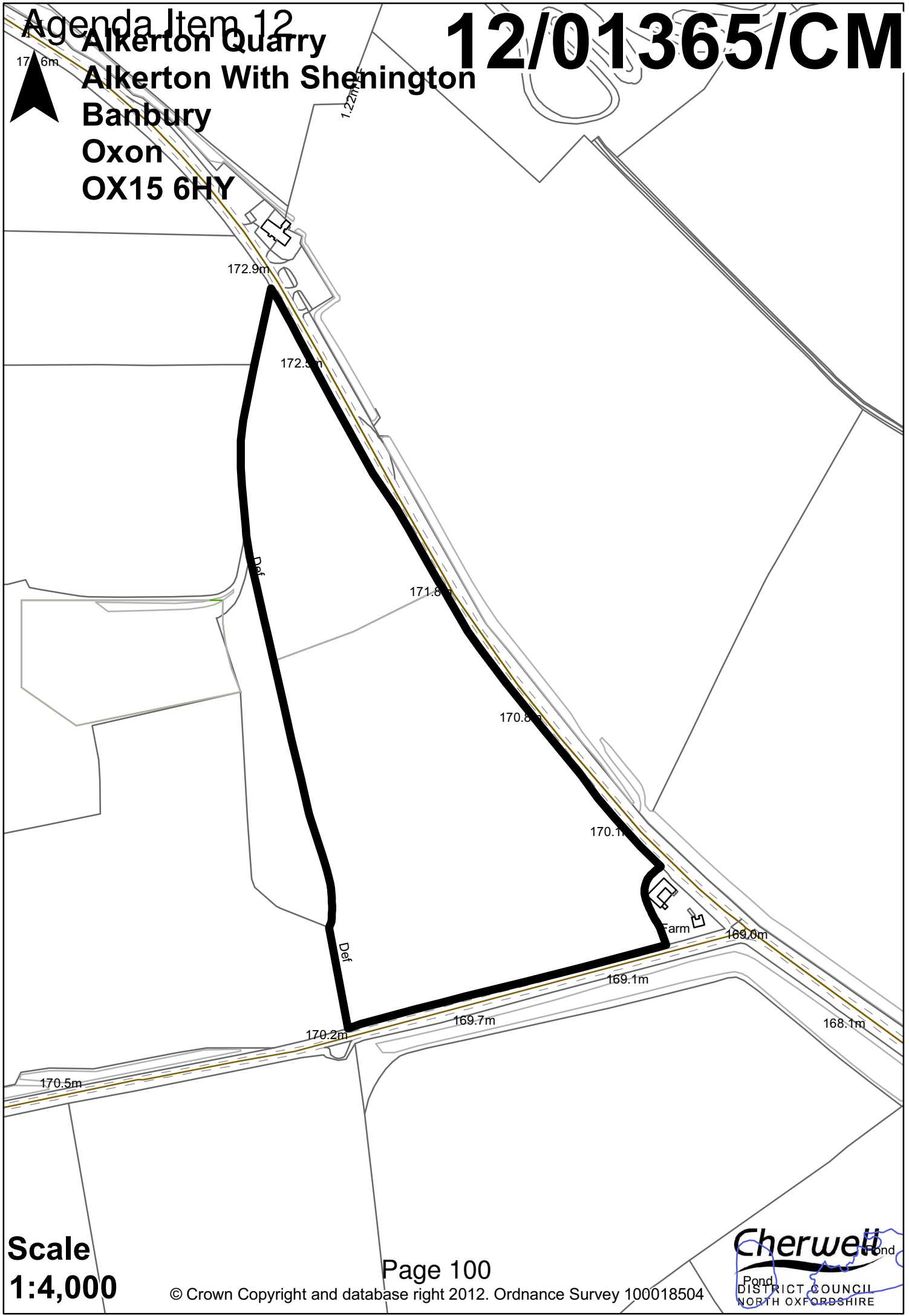
- 6.1 This development was only permitted in this location due to it being a unique live/work development that was intended to reduce traffic generation by co-locating residential and commercial elements, and that the site was not considered to be remote, being close to the established centres of population at Bletchington and Kirtlington. Removing the conditions would make it a standard residential development in the open countryside, which would not be acceptable in this location and contrary to the Policy EMP4 and H18 of the adopted Cherwell Local Plan and EMP5 and H19 of the Non-Statutory Cherwell Local Plan 2011 and SLE 1 of the Proposed Submission Local Plan (August 2012) and Government guidance contained in the National Planning Policy Framework.

## **7. RECOMMENDATION**

**That the application be refused for the following reason:**

1. The Council's determination of the whole live/work complex was considered on the basis of that it provided a concept of a sustainable form of development that restricted the need to commute to the workplace and provided a varied size of unit available at the site, which in turn would be re-cycled back into the market to continue to make such rare units available in the district. In the Council's opinion, by removing the conditions in question, the principle of the live/work development would be eroded and the Council would be unable to control its occupancy and furthermore, would result in a form of development that is tantamount to large houses in the open countryside rather than an employment site with related residential use and contrary to Policies EMP4 and H18 of the adopted Cherwell Local Plan and Policy EMP5 and H19 of the Non-Statutory Cherwell Local Plan 2011 and SLE 1 of the Proposed Submission Local Plan (August 2012) and Government guidance contained in the National Planning Policy Framework.

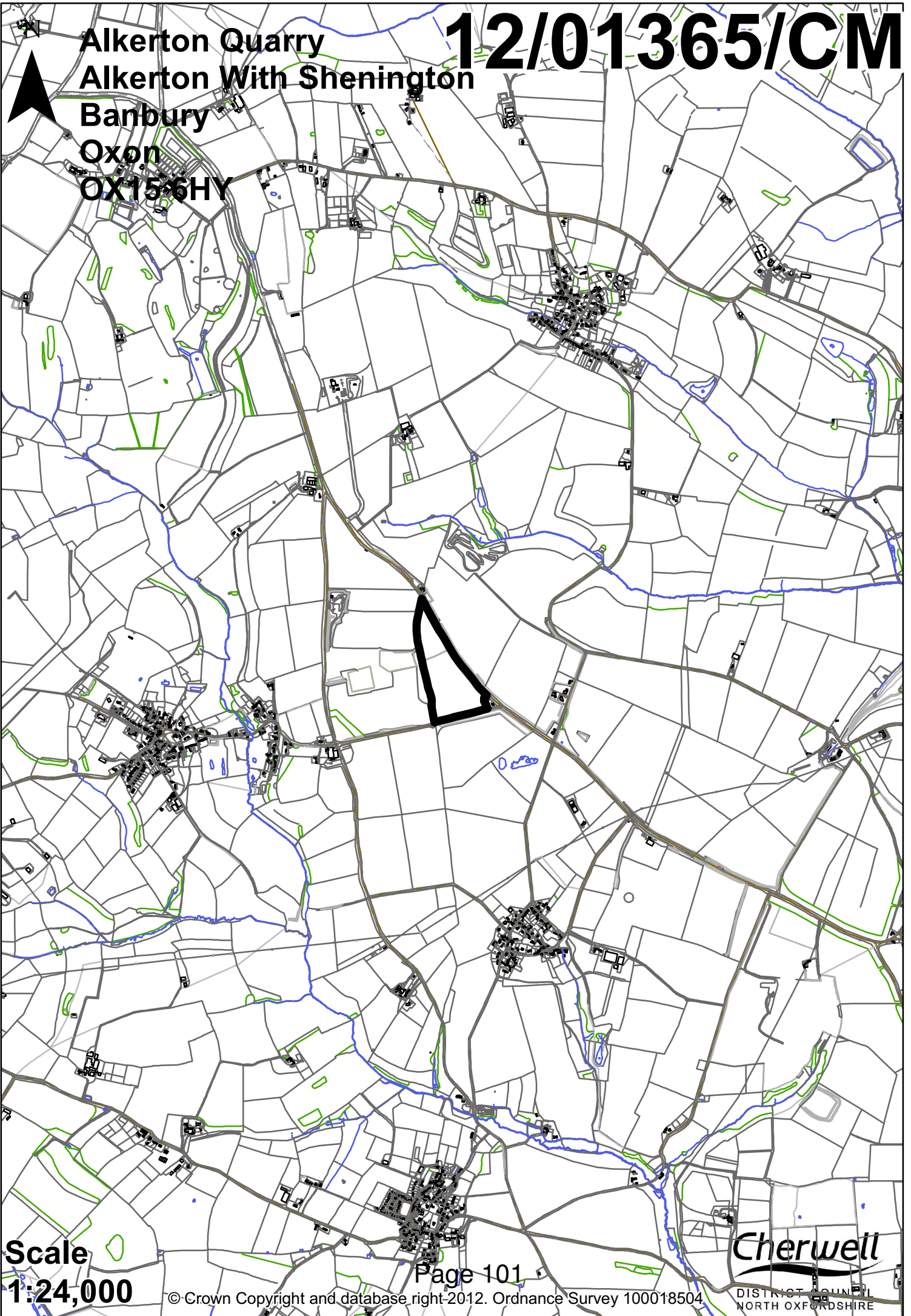
Alkerton Quarry  
Alkerton With Sheerington  
Banbury  
Oxon  
OX15 6HY



Scale  
1:4,000

Alkerton Quarry  
Alkerton With Shenington  
Banbury  
Oxon  
OX15 6HY

12/01365/CM



Scale  
1:24,000

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**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

# Alkerton Quarry, Alkerton with Shenington

12/01365/CM

**Ward:** Wroxton

**District Councillor:** Cllr Webb

**Case Officer:** Simon Dean

**Recommendation:** No objections

**Applicant:** Peter Bennie Ltd

**Application Description:** Application to vary conditions 35, 40, 41, 98 & 99 of planning permission Ref 12/00056/CM; to create restoration contours that allow for effective drainage (OCC ref. MW.0113/12)

**Committee Referral:** County Matter application relating to minerals

## 1. Site Description and Proposed Development

- 1.1 The consultation from the County Council relates to consents granted for minerals (ironstone) extraction from the Alkerton Quarry, accessed from the A422 (Stratford Road). This site was operated under a consent granted in 1999, extraction on this site has now ceased and under the original consent, the operator is required to restore the site to agricultural use.
- 1.2 This application seeks to vary conditions attached to the previous consent. The conditions are 35 (limiting the steepness of slopes within the restored area), 40 (requiring the removal of haul roads etc), 41 (controlling the restored levels), 98 (requiring restoration of the site in a particular direction) and 99 (compliance with restoration contours plans).
- 1.3 The application does not seek to avoid complying with those conditions, but does instead seek to vary them for this particular site in order to better reflect the particular conditions of that site in order to allow the land to properly drain for its post-restoration agricultural use. The applicant also intends to introduce some woodland planting and habitat creation around the margins of the site at the same time.

## 2. Application Publicity

- 2.1 As a County Matter application, all publicity has been carried out by Oxfordshire County Council.

## 3. Relevant National and Local Policy and Guidance

### 4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)  
C13: Area of High Landscape Value  
GB1  
C7

South East Plan 2009  
BE1  
CO4  
Waste policies

#### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

#### **4. Appraisal**

5.1 The key issues for consideration in this application are:

- Landscape impact

##### **Landscape impact**

5.2 As the site lies within a locally designated Area of High Landscape Value, and as the proposed variation relates to the restoration of a quarry, the landscape impact of the variation is clearly important.

5.3 Although the proposal seeks to vary the conditions relating to the restoration of the site, it is not considered that the changes would significantly alter the acceptability of the restoration in landscape impact terms.

5.4 The amendments to the conditions relate to the specific nature of the Alkerton site; allowing steeper restoration contours to increase the available area of agricultural land, the retention of the haul road to allow agricultural machinery to access that land, the need to properly drain the agricultural land and to allow additional woodland and shrub planting.

##### **Conclusion**

5.5 It is considered that the proposed variations to the conditions would not cause any harm to the landscape beyond what has already been approved and that the changes would be of no greater impact.

#### **6. Recommendation**

That Cherwell District Council raises no objections to the application, subject to appropriate replacement conditions, and appropriate monitoring of compliance.

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

# Agenda Item 13

## Land North West Of Alkerton Oaks Business Park

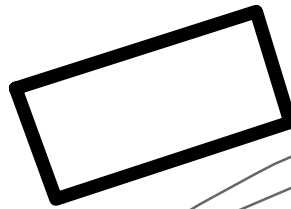


**Stratford Road  
Shenington  
Oxfordshire**

1.22m RH

# 12/00960/F

New  
Covert



Track

**Scale  
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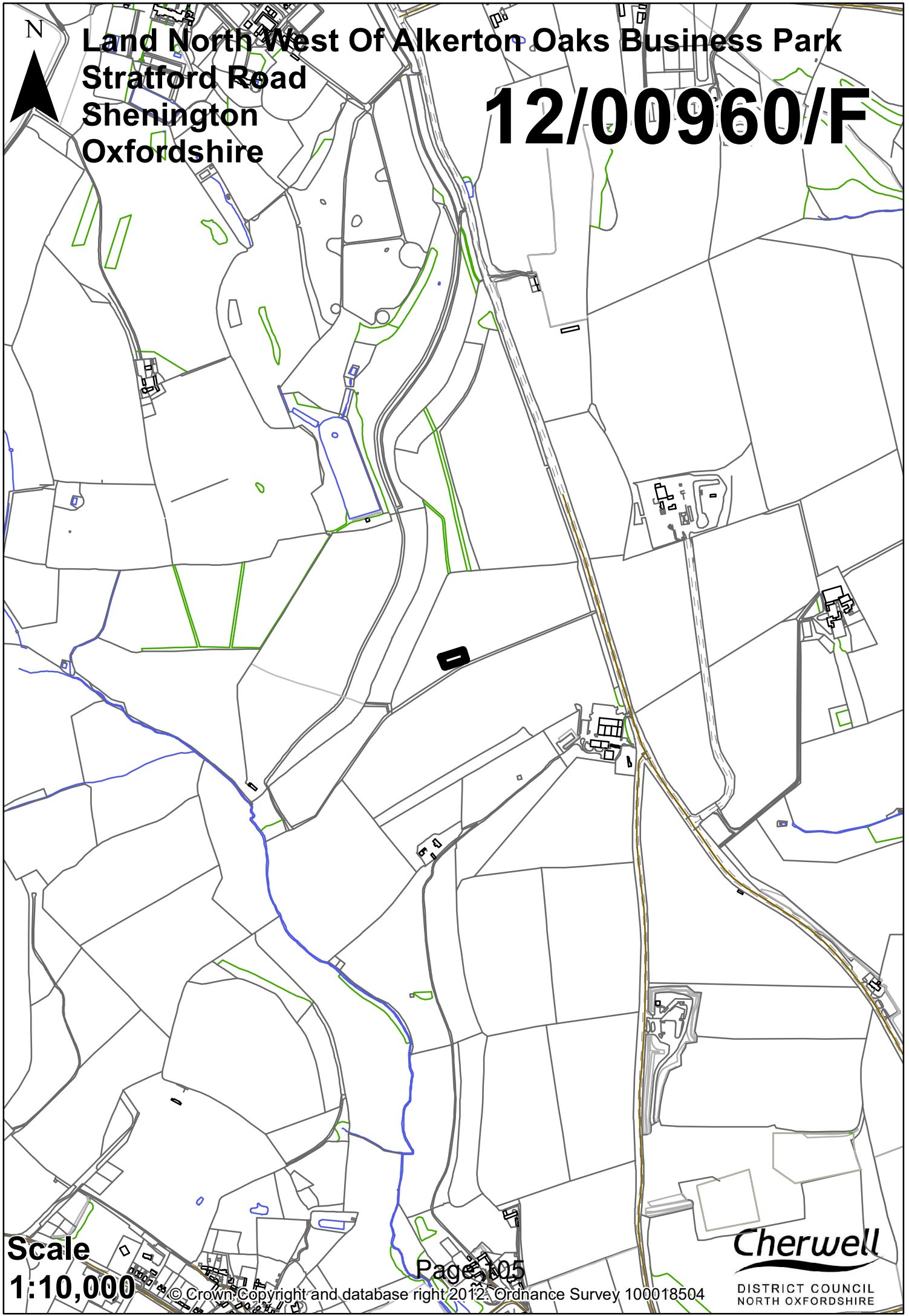
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**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE



**Land North West Of Alkerton Oaks Business Park  
Stratford Road  
Shenington  
Oxfordshire**

**12/00960/F**



**Scale  
1:10,000**

# Land North West of Alkerton Oaks Business Park, Stratford Road, Shenington

12/00960/F

Ward: Wroxton

District Councillor: Councillor Webb

Case Officer: Simon Dean

Recommendation: Approval

Applicant: SGS UK Ltd

Application Description: Multi-span range polytunnel

Reason for Referral to Committee: Major application

## 1. Site Description and Proposed Development

- 1.1 The application site is an area of arable field, to the West of the Stratford Road, in the Northern corner of the District, close to the District boundary. The site is broadly flat, with a public right of way running along the Southern edge. The field is bounded by strong tree lines to the East and West, and a similarly strong hedge line (albeit at a lower height) to the South. The site lies within the locally designated Area of High Landscape Value, but is not within the AONB. Shenington and Alkerton, with its' designated Conservation Area and Scheduled Ancient Monument lie approximately 1-1.3km to the South.
- 1.2 The proposal is for the erection of a 24x47.5m ( 1140 sq.metres) polytunnel, with 3m walls reaching a total height of 4m, running along the Northern side of the hedge-line. The polytunnel is to be used for purposes associated with SGS's field trial business, which is based in the Alkerton Oaks business park to the immediate South of this site. The polytunnel is accessible by an existing gate onto the Stratford Road, but the applicants intend to access it from the industrial estate, across the fields from their offices.
- 1.3 The polytunnel is to complement the existing SGS operations on the site; providing year-round space for growing crops for small scale field trials (as already occur on the fields surrounding the site). The applicants do not intend to provide any electrics or lighting to the polytunnel and will not be creating a new access.

## 2. Application Publicity

- 2.1 The application has been advertised by way of site notice and press notice. The final date for comment was the 20<sup>th</sup> September 2012. No correspondence has been received as a result of this consultation process.

## 3. Consultations

- 3.1 **Shenington with Alkerton Parish Council:** *"object to this application for the following reasons: The Shenington with Alkerton Conservation Area Appraisal published February 2009 by Cherwell District Council demonstrates that the site of the application falls within the setting of the conservation area. As a consequence, the parish council believes that the application requires very careful review including on-site appraisal to determine whether the setting would be adversely affected and, if so, whether planning conditions could be applied that would provide adequate protection."*

### Cherwell District Council Consultees

- 3.2 **Landscape Officer:** *"Further to a site visit and consideration of the visual impact and landscape sensitivity. The site is within an Area of High Landscape Value I have no strong objection to this multi-span polytunnel being erected, given the structure may appear temporary and the glare factor may be lower than that of glass. However, I recommend the following conditions. The hedgerow immediately south of the polytunnel is to be retained and maintained at its maximum full grown height and present density to screen from open countryside from the south/south west and adjacent business park. The maintenance height is to be indicated. The Stratford Road hedgerow to be retained and maintained at current height and density. The maintenance height is to be indicated. The New Covert Plantation provides a valuable screen to the development*

*immediately northwest and I hope that this may continue to be the case. Future applications for increasing such development in this area would, in effect produce a greater detrimental visual impact which would be inappropriate to the AHLV designation.”*

#### **4. Relevant National and Local Policy and Guidance**

##### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan (Saved Policies)  
C7: Landscape conservation  
C13: Area of High Landscape Value  
AG2: The Construction of Farm Buildings

South East Plan 2009  
CC1: Sustainable development  
BE6: Management of the historic environment

##### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

#### **5. Appraisal**

5.1 The key issues for consideration in this application are:

- Principle
- Landscape impact
- Impact on the setting and significance of the designated heritage assets

##### **Principle**

5.2 The proposal, relating as it does to an existing agricultural business in the countryside is considered to be acceptable in principle. Both the new National Planning Policy Framework and the adopted Local Plan place a strong degree of emphasis on the rural economy and this proposal relates to an important part of the rural economy, allowing the business to be sustained and expand.

5.3 The acceptability of proposals relating to agriculture and the broader rural economy is generally couched in terms of landscape and visual impact, which will be assessed below.

##### **Landscape impact**

5.4 As the site lies within the locally designated AHLV, is within largely open countryside (notwithstanding the boundary screening noted elsewhere) and is a rural area, the landscape impact of the proposals is important to assess. The landscape impact is also a key facet of the policy tests for the proposal set out in the saved adopted policies of the local plan.

5.5 The Parish Council have expressed concern that the proposal may harm the landscape, owing to the nature and topography of the site. However, given the well-screened nature of this particular field (with substantial hedgerows to the North and South, and substantial tree-belts to the East and West), the relatively low-key appearance of the proposal (including the likely matte-finish plastic sheeting) and the agricultural nature of the proposal leads Officers to consider that the impact is acceptable.

5.6 Whilst the polytunnel will be visible from the public right of way running east-west through the site, that impact of the structure is considered to be acceptable, as the structure is not wholly inappropriate or unexpected within such an agricultural setting and landscape.

##### **Impact on the setting and significance of the designated heritage assets**

5.7 The Parish Council have raised the issue of the impact of the proposal on the setting of the Shenington with Alkerton Conservation Area, and, by association, the impact on the setting of the “Lynched ridge and furrow N of Shenington” Scheduled Ancient Monument (list number 1006328). They have suggested that the “*application requires very careful review including on-site appraisal to determine whether the setting would be adversely affected*”. During the course

of the application, both the Case Officer and the Landscape Officer have visited the site, and assessed the relationship of the application site to the wider countryside and the village of Shenington.

- 5.8 Given the distance from the village, the intervening natural screening (field boundaries) and the intervening development (principally the Alkerton Oaks business park), it is not considered that the proposal will harm the setting or significance of those heritage assets.

#### **Conclusion**

- 5.9 The proposal is considered acceptable in terms of its impact on the landscape and its impact on the setting and significance of the heritage assets. In addition, the proposal, which is essentially an agricultural use, is appropriate for the location, and will contribute towards a prosperous and diverse rural economy.
- 5.10 The comments of the Parish Council with regards to the potential landscape impact of the proposal are noted, but for the reasons set out above, it is not considered that those objections are sustainable.
- 5.11 Furthermore, the proposal does not harm the setting or significance of the heritage assets.

## **6. Recommendation**

### **Approval, subject to the following conditions:**

- 1 Time
- 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 and the materials and finishing details included therein;
  - i. drawing PL-RB3-127462-0001 Rev A (submitted with the application)
  - ii. the site layout plan (submitted with the application)
  - iii. the site location plan (submitted with the application)
  - iv. the details set out in the Application Forms and Design & Access Statement, including details on access (submitted with the application)

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority.

- 3 Permission specific to SGS – remove when no longer used
- 4 Retain hedgerows

### **PLANNING NOTES**

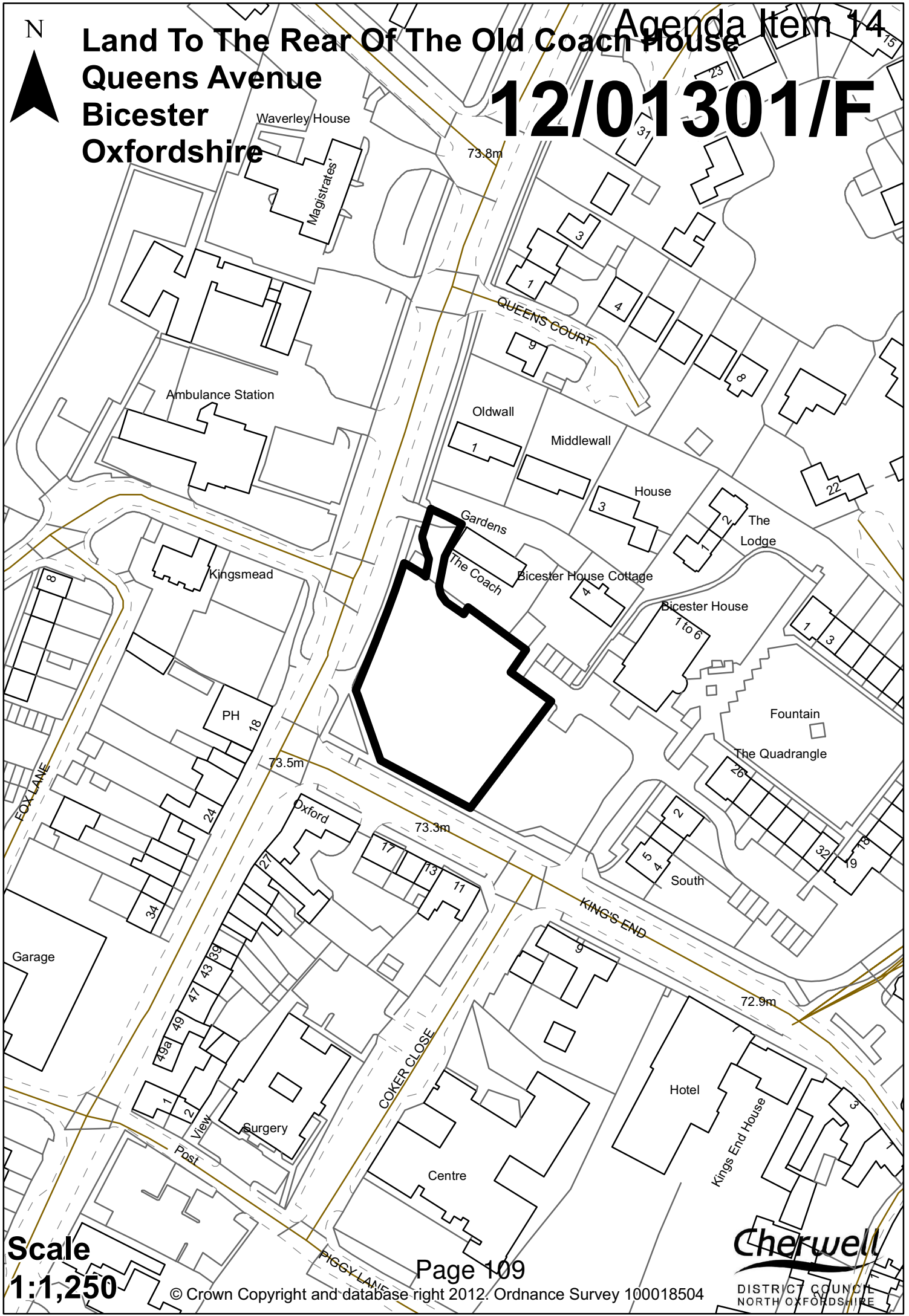
- 1) PROW protection/ no obstruction

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

The Council, as Local Planning Authority, has determined this application in accordance with the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the proposal is of a size and style that is appropriate and will not unduly impact on the character or openness of the countryside, the character of the area or the amenity of users of the public rights of way network. In addition, the proposal will not harm the setting or significance of the designated conservation area or Scheduled Ancient Monument. As such the proposal is in accordance with Policies CC1 and BE6 of the South East Plan 2009, Policies C7, C13 and AG2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework. 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.

# Land To The Rear Of The Old Coach House Queens Avenue Bicester Oxfordshire

# 12/01301/F



Scale  
1:1,250

Land To The Rear Of The Old Coach House  
Queens Avenue  
Bicester  
Oxfordshire

12/01301/F

Scale  
1:10,000

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**Cherwell**  
DISTRICT COUNCIL  
NORTH OXFORDSHIRE

# Land to the Rear of The Old Coach House, Queens Avenue, Bicester

12/01301/F

**Ward:** Bicester Town

**District Councillor:** Cllr D M Pickford,  
Cllr Edwards

**Case Officer:** Rebecca Horley

**Recommendation:** Approval

**Applicant:** Mr & Mrs T Clarkson, The Old Coach House, Queens Avenue, Bicester

**Application Description:** New dwelling with integral garage. New garden shed for solar panels and cycle parking.

**Committee Referral:** Member request

## 1. Site Description and Proposed Development

- 1.1 This 0.18 hectare site occupies a corner plot at the junction of Queen's Avenue with King's End. It is a walled garden to the south of The Coach House (a curtilage listed property) and was originally part of the garden to Bicester House, the grade II listed building situated to the west. It remains as garden land under the same ownership as the applicant who lives at The Coach House.
- 1.2 The site is within the Bicester Conservation Area and is part of the setting of a listed building and a curtilage listed property. The site is further constrained by the presence of several TPO'd trees and is a site of archaeological interest.
- 1.3 The proposal seeks consent for a new dwelling to a height of 6.5m (2.5m to eaves) allowing for a first floor for 4 No. bedrooms. It is linear in form with a gable width of 9m and includes undercover parking for 2 cars accessed from the front (north) elevation. The roof features a chimney and several rooflights. The application also introduces a new garden shed of domestic proportions to be located at the rear of any existing garage, part of Bicester House Cottage. This is proposed to be used as a cycle store and features the solar panels on its roof.
- 1.4 The dwelling is proposed to be built of limestone (Cotswold) with a grey slate roof and timber windows. A close boarded fence will mark the boundary on the east side of the garden and a new 1.8m stone wall is proposed between the 2 properties. Access to the site is proposed to be shared from the existing point from the Queens Avenue. The established stone wall, at 2.6m in height will remain untouched along the south and west boundaries to the site.
- 1.5 Members may recall a previous similar application 10/01856/F which was approved, following a site visit and committee consideration on 24 March 2011. This application includes amendments to that scheme as detailed in paras 5.6 and 5.7 below.

## 2. Application Publicity

- 2.1 The application has been advertised by way of a site notice placed by the entrance to the site on 28 September. A press notice was also published on 4 October. The final date for comment on this application was 25 October 2012.
- 2.2 To date three letters of objection have been received, one of which is from the Bicester House Estate Residents Association (BHERA) representing 51 people. Whilst full details of the objections raised are available to view on public access, a summary of the issues that are material considerations relevant to the case is provided below:
1. The height reduction from the previous withdrawn scheme (12/00544/F) amounts to 50 cm but the house would still be visible from the grounds of Bicester House Estate and the first floor window on the side elevation would give a clear view into our grounds. This 'modern' dwelling would be unsuitable in an area of such historical importance.
  2. A full archaeological survey is still required.
  3. An up to date arboricultural report is required
  4. Increase in height from 6.3m to 7m in order to increase the loft capacity to provide extra bedrooms. This is creeping development.
  5. The arboricultural method statement has already been breached as the applicant has not protected the ground within the site.
  6. The proposed building will be longer and taller and we support the comments made by the BHERA. There will be a consequential impact on the Conservation Area and the setting of the listed building.
  7. The revised height will impact on the outlook both for our neighbours at the Bicester House and also from our property at Bicester House Cottage.
  8. Loss of trees and consequential impact on bats
  9. The cycle shed will damage tree routes and will be visible from Bicester House having a further negative impact on their outlook.

## 3. Consultations

- 3.1 Bicester Town Council: Comments awaited

### **Cherwell District Council Consultees**

- 3.2 **Head of Safer Communities, Urban & Rural Services (Arboriculture):** No objections subject to conditions.

The revised footprint of the previously approved design requires the removal of two trees in addition to the previously agreed nine. Of these two additional trees, T20 and 23, only the lime tree T20 has any merit primarily due to its reasonable condition and its contribution within the overall group of trees present and in particular those adjacent to the west and south-west boundary. The loss of this tree, as with the removal of the other ten, is considered an acceptable loss to facilitate the proposal providing suitable replacement planting is undertaken within the boundary to ensure that the amenity of the site and surrounding area is not compromised.

The application is accompanied with a planting plan consisting of 9 No trees of which only two, the holm oak and the pendulous silver lime offer any significant replacement value in terms of amenity. Apart for the proposed *Betula pendula*

'*Tristis*', I would consider the remaining seven trees to be small to medium sized garden ornamental specimens of comparatively limited longevity and reduced amenity potential. Also the proposed *Robinia pseudoacacia* '*Frisia*' is a species currently experiencing an increased number of losses due to an, as yet, unidentified cause. As a result, it may be an inappropriate species to select as a replacement in such a particular scheme.

In order to promote an acceptable level of tree coverage and to maintain amenity values, it is important to mitigate necessary tree losses with species of trees capable of achieving similar benefits. As a result, I would like to see the following amendments to the submitted planting proposals:

N1 – holm oak to be kept as proposed but increased in planting size (12-14cm) and accompanied in a 5.0m triangulated planting scheme with 1 No *Carpinus betulus* (12-14cm) and 1 No *Pinus sylvestris* (12-14cm)

N2 – silver lime to be kept but increased in planting size (12-14cm) and accompanied again in a triangulated planting scheme with 1 No *Carpinus betulus* (12-14cm) and 1 No *Pinus sylvestris* (12-14cm)

N3, 4, 5, 6, 7 & 8 may still be kept as proposed due to their considered locations, potential heights and influences adjacent to the solar panels and the access drive.

N9 – as discussed, it is my opinion that the *Robinia* should be substituted with another species of tree considered to have a greater chance of survival and establishment such as *Acer campestre* (field maple), *Acer platanoides* (Norway maple) or *Tilia platyphyllos* '*rubra*'. With regards to location, I would consider it more appropriate for N9 to be positioned in a central location between the existing trees T9, 10 & 11.

It should also be noted that although the AIA submitted with the application refers to the consideration of lighting levels within the property and grounds there is no direct reference to the impact of existing trees or replacement trees upon the proposed solar panels.

**3.3 Head of Safer Communities, Urban & Rural Services (Ecology):** No objection.

The comments made on the previous application remain relevant and are as follows: There is no need for any ecological surveys to be carried out. Despite records of great crested newts (GCN) within 500m of the site, the habitat is not particularly suitable for them and there are no ponds nearby (they wouldn't use the stream). Research has shown that most GCN are found within 100m of their breeding ponds. There is little potential for other protected species on the site as it consists of hardstanding and thin overgrown grassland. The wooden fencing around the site prevents any impacts on the adjacent stream resulting from the proposals.

**3.4 Head of Strategic Planning & the Economy (Conservation):**

The fundamental question that needs to be asked in relation to this application is, does the proposed dwelling cause harm to the setting of the listed building or curtilage listed building adjacent or the appearance and character of the conservation area? The conclusion that must be drawn is that although the application is not without its detracting aspects only very limited harm can be claimed and therefore on balance should be recommended for approval. In its favour the siting of the house is improved over previous submissions although moving the new dwelling nearer to Kings Road may result in the roof being

seen above the tall garden wall. It is recommended that the conditions from 10/01856/F to be carried over (in particular condition 3-9)

- 3.5 **Head of Public Protection and Development Management** (Environmental Protection Officer – Contaminated land): No objections were received on the previous application/s subject to the full contaminated land conditions.

#### **Oxfordshire County Council Consultees**

- 3.6 **OCC Highways:** No objection, subject to access specification and no conversion of the garage space.
- 3.7 **OCC Drainage:** No objection.
- 3.8 **OCC Archaeology:** No objection subject to conditions to ensure the implementation of a staged programme of archaeology work.

#### **4. Relevant National and Local Policy and Guidance**

##### **4.1 Development Plan Policy**

Adopted Cherwell Local Plan (Saved Policies)

C10 – Historic Landscapes, Parks & Gardens and Historic Battlefields  
C23 – Conservation Areas  
C27 – Design Considerations re: Historic Settlement Pattern  
C28 - Design, layout etc standards  
C30 – Housing standards  
C33 – Undeveloped gaps of historic value  
ENV12: Contaminated Land

South East Plan 2009 Policies

CC1: Sustainable Development  
CC2: Climate Change  
CC4: Sustainable Design and Construction  
CC6: Sustainable Communities & Character of the Environment  
H5: Housing Design and Density  
T1: Manage and Invest  
T4: Parking  
NRM5: Conservation and Improvement of Biodiversity  
NRM11: Development Design for Energy Efficiency and Renewable Energy  
C4: Landscape and Countryside Management  
BE1: Management for an Urban Renaissance  
BE6: Management of the Historic Environment  
CO1: Core Strategy

##### **4.2 Other Material Policy and Guidance**

National Planning Policy Framework

Cherwell Local Plan - Proposed Submission Draft (August 2012)

The draft Local Plan is out for public consultation. Although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

ESD1: Mitigating and Adapting to Climate Change  
ESD3: Sustainable Construction  
ESD10: Protection and Enhancement of Biodiversity & the Natural Environment  
ESD13: Local Landscape Protection & Enhancement  
ESD16: The Character of the Built Environment

#### Non-Statutory Cherwell Local Plan 2011

In December 2004 the Council resolved that all work to proceed towards the statutory adoption of a draft Cherwell Local Plan 2011 be discontinued. However, on 13 December 2004 the Council approved the Non-Statutory Cherwell Local Plan 2011 as interim planning policy for development control purposes. Therefore this plan does not have Development Plan status, but it can be considered as a material planning consideration. The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

TR2: Transport and Development  
TR5: Road Safety  
TR11: Parking  
EN17: Contaminated Land  
EN21: Energy Efficiency  
EN39: Conservation Areas & Listed Buildings: General Principles  
EN40: Conservation Areas: Preservation & Enhancement  
EN44: Listed Buildings: Setting  
EN47: Archaeology and the Built Heritage  
EN48: Historic Landscapes: Parks, Gardens & Battlefields  
D1: Urban Design Objectives  
D5: The Design of the Public Realm  
D6: House Extensions & Alterations  
D9: Energy Efficient Design

## **5. Appraisal**

5.1 The key issues for consideration in this application are:

- Policy Context
- History
- Effect on the heritage assets
- Effect on the trees
- Siting and design
- Neighbour impact
- Highway Safety
- Other matters

## Policy Context

- 5.2 The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF defines this as having 3 dimensions: economic, social and environmental. Also at the heart of the NPPF is a presumption in favour of sustainable development and in the context of this application would include promoting sustainable transport, delivery of a wide choice of high quality homes, the promotion of healthy communities, meeting the challenge of flooding and the conservation and enhancement of the natural and historic environment.
- 5.3 Paragraph 14 of the NPPF states that where the development plan is absent, silent or relevant policies are out of date, in order to reflect the thrust of the guidance for a *presumption in favour of sustainable development*, planning permission should be granted unless harm can be identified.
- 5.4 Notwithstanding that the principle of allowing a separate dwelling at this site has already been established, it is worthy to note that the site falls within the town of Bicester so is appropriately located in policy terms as development is sought close to urban centres to ensure the promotion of sustainable development. Good design is fundamental to the development of high quality new housing which should also seek to contribute to the creation of sustainable mixed communities.
- 5.5 Being constrained by its siting within the Conservation Area, in the setting of a listed building and an area of archaeological interest, the development needs to be assessed against the aim of conserving heritage assets. The NPPF advises that if a proposal would be harmful to such interests then it should be weighed against any wider public interest and that the proposal should be fully justified. It is equally clear that there is no intention that areas should be 'frozen in time' and only where there is harm that cannot be outweighed should consent be refused.

## History

- 5.6 There is an extant permission for a dwelling to be erected at this site (10/01856/F). The principle dimension differences between the approved dwelling and this proposal are as follows:

<u>Approved</u>	<u>Proposed</u>
Ridge Height – 6.26m	6.5m
Eaves Height – 2.4m	2.5m
Gable width – 8.6m	9m
Length – 22.2m	24m

- 5.7 It is noted that there is an overall height difference is 240mm from the previous approval. The applicant states that in order to achieve the code 4 values imposed by the previous committee approval, the increase is necessary unless the site is dug out further into the ground but this may impact on the tree roots. The width change is a result of now taking in the canopy and seeking to keep the roof pitch low. The overall length has changed to allow cars to be parked front ways thereby reducing the amount of hardstanding required for the manoeuvring. This has also had a bearing on the orientation of the building

which has now moved to one which is more parallel to the Coach House and also other buildings in proximity including Bicester House Cottage and Middlewall House.

- 5.8 With there being an extant permission for a similar property here it is relevant to only consider the additional impacts of the revised dimensions and the orientation against the identified key issues for consideration.

#### **Effect on the heritage assets**

- 5.9 The boundary of the Conservation Area passes to the north of the subject property and includes the site and the listed building and shares a small section of the boundary to the site on the west side along Queens Avenue. It is considered that the site is within the curtilage of and important to the setting of the host listed building (Bicester House) despite the physical separation of the fence. The site is densely tree'd surrounded by a high wall that is clearly has an association with that building.

- 5.10 Given the clear sensitive nature of the site in heritage terms consideration is given to any additional impacts that the revised changes will cause to those heritage assets. With regard to the listed building setting, the principle of development has already been conceded and also the archaeological aspects can be dealt with by condition. The remaining concern relates to the effect on the Conservation Area.

- 5.11 It was noted from the previous permission that the top of the roof of the proposed property will be visible from the public domain. Views north from Kings End into the site are restricted by the narrowness of the road and the wall but wider views are enjoyed from Queens Avenue but only from its corner with Kings End as views to the site from the north are restricted by other buildings. The top of the building would also be visible from the southern part of the site from Kings End.

- 5.12 The question is whether or not an additional 240mm height difference is going to be so harmful to this one aspect of the Conservation Area as to warrant refusal. There is also an overall footprint increase but that will go almost wholly unnoticed as will, it is considered, the height increase. One will still not be able to view the additional rooflights and the most sensitive elevation (south) has far fewer than those proposed on the north elevation.

#### **Effect on the trees**

- 5.13 The revised siting has been considered by the arboriculturalist who has considered the scheme and concluded that on balance the loss of the trees are considered acceptable in order to accommodate the development providing suitable replacement planting is undertaken within the boundary to ensure that the amenity of the site and the surrounding area is not compromised. In order to achieve this various conditions are recommended. These are important because there is no doubt that the trees at this site make a significant contribution to the character and appearance of this part of the Conservation Area as they are mature and enjoyed from the public domain at some distance.

## **Siting and Design**

- 5.14 The application is for a revised siting and design to that already approved under 10/01856/F. Policies C28 and C30 of the adopted Cherwell Local Plan seek to ensure that all developments (especially those in sensitive areas such as Conservation Areas) are of a high standard and that housing development should be compatible with existing dwellings in the vicinity.
- 5.15 Keeping the property at bungalow height of a not dissimilar footprint, size, gable widths, in materials that match and in a linear form and layout represents a sound design which is appropriate in this area. The revised positioning of the dwelling reflects more closely the footprint layouts of the adjacent properties and there will be no noticeable difference from that already approved.
- 5.16 The design introduces rooflights in order to boost the Code 4 target and solar panels are also proposed on the new cycle shed. Such features are considered appropriate in design terms subject to detail which can be conditioned.

## **Neighbour Impact**

- 5.17 Given the distances from the neighbours there will be no additional impacts caused as a result of the changes proposed. The new garden shed is appropriately sited not to cause any harm to neighbours in accordance with policy.

## **Access and highway safety**

- 5.18 The position regarding the access remains unchanged and the revised parking layout within the proposed dwelling is acceptable subject to conditions restricting its use for parking only to prevent further pressure for garage parking elsewhere on the site.

## **Conclusion**

- 5.19 Planning permission already exists for a similar property. This application would mean that the height will increase by 240mm which is not considered significant and will likely go unnoticed from the public domain of the street particularly when compared to the approved scheme. Similarly the revised dimensions of the length and width will not be noticeable. The effect on the trees is acceptable which goes some way to ensuring that the public amenity is protected with the Conservation Area. The scheme will produce a property which can claim code 4 eco-credentials which remain the aspiration for developments particularly in Bicester.

## **6. Recommendation**

**Approval**, subject to the following conditions:

1. SC1.4 (RC2) – Duration Limit.
2. Except where otherwise stipulated by conditions attached to this permission,

the development shall be carried out strictly in accordance with the following information: dwg numbers WG13-001, 024(A), 030(A), 031(C), 032(B) 033(A) and 034(A) and the Design & Access Statement received with the application.

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

3. That the development shall be built in accordance with the limestone sample panel as constructed and seen on site unless otherwise approved in writing by the Local Planning Authority (RC5AA)
4. That the roof shall be covered with the natural slate as seen on site, unless otherwise approved in writing by the Local Planning Authority (RC5B)
5. SC3.7BB (RC12AA)
6. SC4.13CD (RC13BB)
7. SC5.5A .....timber windows.....(RC4A)
8. SC5.14A ....doors.....(RC4A)
9. SC5.19A (RC4A)
10. SC6.2AA

Reason – To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the interests of the heritage assets and the amenities of occupants of adjoining dwellings in accordance with Government advice contained in the National Planning Policy Framework, Policies BE1 and BE6 of the South East Plan and Policies C28 and C30 of the adopted Cherwell Local Plan.

11. SC6.3 (RC4A)
12. SC6.6AB

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the interests of the heritage assets and to ensure that satisfactory provision is made for the parking of vehicles on site and clear of the highway in accordance with Government advice contained in the National Planning Policy Framework, Policies BE1, BE6 and T4 of the South East Plan 2009 and policy C28 of the adopted Cherwell Local Plan.

13. SC9.13A .....4.....(RC93AA)
14. Except where otherwise stipulated by conditions attached to this permission the development shall be carried out strictly in accordance with the Arboricultural Impact Assessment & Method Statement by Trevor Clarkson of Crown Consultants Ltd dated 30 August 2012 submitted with the application,

unless otherwise agreed in writing by the Local Planning Authority. (RC72A)

15. Notwithstanding the details submitted in the Tree Planting Scheme, a revised Tree Planting Scheme shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of the development. Thereafter the development shall be carried out in accordance with the approved Tree Planting Scheme.

Reason – In the interests of the visual amenity 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

16. Prior to the commencement of any works on site or the carrying out of any operation relating to the provision of services, full details of all service trenches, pipe runs or drains and any other excavation, earth movement or mounding required in connection with the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Submitted in a drawing format, the details must include the identification and location of all existing and proposed trees, load bearing planting pits for hard-surface areas, as well as shrubs and hedgerows within influencing distance of such services. The development shall be carried out in accordance with the details so approved.

Reason – To ensure that the tree/trees is/are retained in a safe and healthy condition and is/are not adversely affected by construction works, in the interests of visual amenity and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

17. All agreed service trenches, pipe runs, drains or any other excavation to be constructed within the agreed Root Protection Area (RPA) of the tree/trees on the site shall be undertaken in accordance with National Joint Utility Group (NJUG) 'Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity To Trees – Volume 4 and all subsequent revisions and amendments of.

Reason – To ensure that the tree/trees is/are retained in a safe and healthy condition and is/are not adversely affected by construction works, in the interests of visual amenity and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

18. No works or development shall take place until a scheme of supervision for the arboricultural protection measures has been approved in writing by the Local Planning Authority. This scheme will be appropriate to the scale and duration of the works and shall include details of:

- (a) the project arboriculturalist employed to undertake supervisory role of relevant arboricultural issues. Applicant/agent to provide written confirmation and contact details of chose individual or company.
- (b) the relevant persons / contractors to be briefed by project arboriculturalist on all on-site tree related matters.
- (c) the timing and methodology of scheduled site monitoring visits to be undertaken by the project arboriculturalist.

(d) the procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to agreed tree works and arboricultural incidents.

(e) appropriate supervision for the installation of load-bearing 'structural cell' planting pits and / or associated features such as irrigation systems, root barriers and surface requirements (e.g. arboresin, tree grills, areas of reduced dig or cellular confinement systems).

The Local Planning Authority will require the scheme of supervision to be administered by a qualified arboriculturist approved by the Local Planning Authority but instructed by the applicant.

Reason - To ensure that no proposed operations impair the health of any retained trees in the interests of the visual amenity of the area, to ensure the integration of the development in to the existing landscape and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

19. 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, 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 including pavements, pedestrian areas, 'reduced-dig' areas, crossing points and steps. (RC10A)
20. That 13 No. 14-18cm tree(s) shall be planted in the first planting season (mid November to end of March) following removal of the tree(s) for which permission has been granted.

Reason – To ensure the continuity of tree cover in the interest of visual amenity of the area and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

21. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation relating to the application site area which shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To safeguard the recording and inspection of matters of archaeological importance on the site in accordance with Government advice contained in the National Planning Policy Framework and Policy BE6 of the South East Plan 2009.

22. Prior to any demolition on the site and the commencement of the development and following approval of the Written Scheme of Investigation referred to in condition 21, a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in

accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Reason – To safeguard the identification, recording, analysis and archiving of heritage assets before they are lost and to advance understanding of the heritage assets in their wider context through publication and dissemination of the evidence in accordance with Government advice contained in the National Planning Policy Framework and Policy BE6 of the South East Plan 2009.

23. Prior to the commencement of the development hereby permitted a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model shall be carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and shall be submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason - To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy ENV12 of the adopted Cherwell Local Plan and Government Guidance contained in the National Planning Policy Framework.

24. If a potential risk from contamination is identified as a result of the work carried out under condition 23, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason – as condition 23 above.

25. If contamination is found by undertaking the work carried out under condition 24, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation

and/or monitoring required by this condition.

Reason – as condition 23 above.

26. If remedial works have been identified in condition 25, the remedial works shall be carried out in accordance with the scheme approved under condition 25. The development shall not be occupied until a verification/validation report that demonstrates the effectiveness of the remediation carried out, has been submitted to and approved in writing by the Local Planning Authority.

Reason – as condition 23 above.

#### Planning Note

1. With regard to condition 15, the revised Tree Planting Scheme should be guided by the advice offered in the Council's arboricultural Officer's Comments dated 23 October 2012.

#### **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 it conserves the interests of the heritage assets (Conservation Area, listed buildings and their settings, trees and archaeology), is compatible with the scale and character of the surrounding area, not harmful to the public or private amenity, provides adequate amenity space without adversely affecting that of surrounding properties, and is not considered to be detrimental to highway safety. As such the proposal is in accordance with government guidance contained in the National Planning Policy Framework, Policies BE1, BE6 and T4 of the South East Plan 2009 and Policies ENV12, C23, C27, C28 and C30 of the adopted Cherwell Local Plan. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

# Agenda Item 15

## Planning Committee

### Quarterly Enforcement Report

8 November 2012

### Report of Head of Public Protection And Development Management

#### PURPOSE OF REPORT

To inform and update Members of the progress of outstanding formal enforcement cases and to inform Members of the overall level of activity in the Development Management service.

This report is public
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#### Recommendations

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The Planning Committee is recommended:

- (1) To accept this report.

#### Background

- 1.1 The last quarterly enforcement report was given to this Committee on 19 July 2012, and this report continues the regular reporting on enforcement matters in the format which commenced in October 2008. It will be seen that this report follows the format of that in July in that it widens the scope of the report to give Members information about the level of activity on applications and appeals

#### The Current Situation

##### 2.1 Enforcement

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

I am pleased to be able to report that the continued effort to close down some of the older cases is being successful, albeit that some inevitably continue to appear. This is due to the complexity of the legislation and the availability of challenges/delaying tactics for the potential recipient of enforcement action.

2.2 It should be also noted that the extensive list of actions that previously appeared with regards to Heyford Park no longer appear as all remaining cases have been resolved.

2.3 The formal action that is listed in Appendix 1 is of course only the culmination of the enforcement activity that results in the need to take formal enforcement action involving the use of notices. The enforcement staff receives a wide variety of complaints about alleged enforcement matters that require investigation. There are currently 164 live cases, which is a slight reduction since the last quarter. This still however represents a high level of activity for the limited staff resource. A recent review of the enforcement service has concluded that additional staff is required and steps are currently being taken to see if this can be provided.

2.4 **Planning applications** The following statistics seek to demonstrate the level of current activity in this area. It will be seen that the number of applications remains consistently high and that the number of major applications indicates that we continue to be currently receiving a series of complex and significant applications. The statistics do not reveal the high level of pre-application discussions that are also under way which are being prompted by the Council's land supply situation, the NPPF, and the interest caused by the Banbury and Bicester master planning exercises. As a result of this we predict that the number of major applications will rise in coming months.

2012 ( first six months) 1119 applications of which 27 were majors

2012 (July to Sept) 667 applications of which 18 were majors

2.5 **Planning appeals.** The following statistics give a picture of the level of activity occurring in the appeal area of work. We do not have a separate section dealing with appeals, but rather leave the original case officers to handle that appeal wherever possible

2010 - 48 decisions received - 14 (29%) dismissed and 34 (71%) allowed (27 of them being Heyford Park decisions)

2011- 52 decisions received - 36 (69%) dismissed and 16 (31%) allowed

2012( Jan-Sept) - 37decisions received - 25(68%) dismissed and 12 (32%) allowed.

## Implications

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- Financial:** It is anticipated that the cost of taking enforcement action can be met within existing budgets.  
Comments checked by Karen Muir , Corporate System Accountant 01295 221556
- Legal:** There are no additional legal implications arising for the Council from this report.  
Comments checked by Nigel Bell Team Leader- Planning and Litigation 01295 221687
- Risk Management:** Where it is relevant to do so the risk of taking formal enforcement action is that costs could be awarded against the Council in any appeal that proceeds to an inquiry or hearing if this action is subsequently considered to have been unreasonable. The risk of not taking effective and timely action is that a complaint could be made by a complainant to the Local Enforcement Ombudsman.  
Comments checked by Nigel Bell Team Leader- Planning and Litigation 01295 221687

## Wards Affected

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All

## Document Information

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

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
<p>PROS 27/03 4.09.03</p> <p>PROS 13/06 15.06.06</p>	Hanwell Fields Banbury	Breach of Sec 106 agreement relating to LAPS & LEAPS and laying out of informal open space	Court order 04.09.08	Various dates in 2009	95/01117/OUT	N/A	N/A	<p>CDC actively pursuing the transfer of the remaining sports pitches and parks</p> <p>Legal department have sent a letter to Taylor Wimpey</p> <p>Sports pitches have been transferred. All other matters expected to be resolved by Feb 2012</p> <p>All other transfers expected to take place imminently.</p> <p>Lease completed, verbal update to be given at cttee</p>
<p>ENF 2/06 16.02.06</p> <p>09/00686/ PCN</p>	Bodicote Post Office 43-45 Molyneux Drive Bodicote	<p>Non-compliance with approved plans 04/01317/F</p> <p>Works not completed by 1 November 2009</p>	<p>Enforcement Notice served 24.01.07</p> <p>29.11.09</p>	07.09.07	09/00315/F			<p>15.05.09 undertaking made to the court by Mr &amp; Mrs Ayres who also agreed to pay £250.00 towards the Council's costs Works proceeding but unlikely to be completed by the compliance date.</p> <p>PCN served - extension given until 4.01.10 to respond –</p> <p>Application submitted 10/00267/F and approved subject to condition to comply by the end of August 2010.</p> <p>Some remedial works undertaken</p> <p>Legal advice to be sought on how to proceed to resolve this matter</p> <p>Confidential report presented to the Planning Committee 5 January 2012</p> <p>Recently chased up with agent</p>

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
ENF LB 18/08 26.06.08	Greystones Middle Street Islip	Removal of stonesfield slates and insertion of velux window in north elevation	Listed building Enforcement Notice served 03.11.08	15.09.09	04/00035/F 04/00036/LB	Appeal dismissed 7.08.09	7 August 2012	Hearing 16.06.09. Wording of the notice varied, compliance period extended, appeals dismissed 7 August 2009 Monitoring site for compliance Letter sent to owners to remind them of the need to comply by 7 August 2012. Site visit to be carried out prior to committee. Verbal update to be given
08/00604/ BCON	Lince Lane Copse	Breach of conditions 02/02064/F			12/00098/DISC			Letter sent to the occupiers requesting a timetable for compliance with conditions regarding footpath and car park- Planning application for discharge of condition 27 pending consideration
11/00093/ 94/95/96/97/ 98/99/100/ 101/ ECOUC	Plots 1, 2, 12, 13,15 and 16 Land NE of Fenny Compton Road Claydon	Change of use of agricultural land to amenity land	22/02/2011	28/06/2011		Appeals received 28/03/2011		Hearing 6 and 7 September 2011  Plot Nos. 1,2,12,13,16 – requirements of notice varied on appeal, compliance period extended to 6 months – 28.03.2012 Verbal update to be given to committee Plot No. 15 – appeal dismissed compliance required by 28.12.11 Part compliance achieved on Plot 15 Plot 16 has not complied, prosecution action to be considered

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
10/00218/ ELISTED	Sundial Cottage Shutford	UPVC windows			11/00175/LB			Instructions to legal Requisitions served. Owner has applied to English Heritage to have the property de-listed. If that is unsuccessful agent has stated that windows will be removed. English Heritage has rejected the de-listing. Application approved 28/03/11 with conditions regarding the timetable for the works to be completed by Phase 1 by 31 October 2011 Phase 2 by 30 April 2012 Phase 3 by 31 July 2012 Complied with Phase 1 and 2 Part compliance achieved, compliance period extended
10/00264/ ELISTED	11 Daisy Hill Duns Tew	Conservatory			10/01424/LB 10/01454/F			Instructions to legal 29 July 2010 Meeting held on site Applications refused 29.12.10. Appeals in progress. ASV 26.07.2011 Appeal dismissed 2/09/2011 Letter to be sent to applicant requesting removal. If not removed, instructions to be sent to legal Compliance achieved. This item will not appear next time
11/000**/ ECO	Land at Patrick Haugh/Harris Road, Upper Arcott	Container						Contacted agent and requested voluntary removal. If not removed further notice to be served Container removed, Site visit to be carried out to confirm compliance.

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
11/00138/ EUNDEV	13 Green Road Kidlington	Change of use of garage to a separate dwelling	15/07/2011	16/11/2011			26 April 2012	Appeal received 15/08/2011 Appeal withdrawn 26/10/2011 Compliance period extended to 6 months- ie by 26 April 2012 Officers denied access to property Formal action to be taken Complied with. This item will not appear next time
11/00144/ EUNDEV  12/00098/ Pros	72 Daimler Avenue Banbury	3 ornamental walls to front of property	24/06/2011	27/10/2011	10/01720/F planning appeal dismissed 13/04/2011		6/03/2012	Enforcement appeal dismissed 6/12/2011. Council's costs awarded against the appellant. Council's costs paid by appellant Not complied with the enforcement notice. Instructions to be sent to legal Court case 20 July 2012 Enforcement notice complied with as of 13 September 2012. This item will not appear next time
11/00155/ ELISTD (1) and (2)	A.K.A. 54-56 Parsons Street Banbury	Timber enclosure and decking Awning and flood lights	29/07/2011	01/12/2011	11/00169/F 11/00170/LB refused 21.04.11 12/01268/F 12/01269/LB			Planning and Listed Building appeals dismissed 18 June 2012. Letter before action to be sent Planning applications for alternative scheme received and pending consideration
11/00164/ ECOU	Unit 3A, Bessemer Close, Bicester	Change of use from B8 to B2	22/08/2011	21/10/2011	11/00995/F refused 12/08/2011		20/02/2012	Appeal Dismissed 23 Jan 2012 Current occupier expected to vacate by the end of July Compliance achieved This item will not appear next time

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
11/00197/ EUNDEV	30 Fenway Steeple Aston	Raised platform Children's playhouse in rear garden	16/01/2012	26/03/2012	11/01477/F refused 23/11/2011			Site visit to check for compliance Verbal update to be given
12/00004/ EUNDEV	42 The Paddocks Yarnton	Erection of Timber fence and gates	02/02/2012	02/05/2012	11/01272/F			Planning appeal dismissed 23/03/2012  Site visit to check for compliance – verbal update to be given
12/00013/ EUNDEV	Field Farm Bainton Crossroads Stoke Lyne	Change of use of the land to a mixed use for agriculture and residential	17/02/2012		11/01682/F			Appeal hearing held 26 June 2012-08-06 Notice quashed on appeal, planning permission granted. This item will not appear next time
12/00020/ ECOU	Bishops Blaise Burdrop	Change of use of the land from a public house to residential dwelling house	12/03/2012	12/09/2012			4 April 2013	Appeal dismissed 4 Oct 2012

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
12/00040/ EBCON	Corner Meadow Farnborough Road Mollington	Breach of Condition 9 of 09/00622/F Site access has not been laid out in accordance with the site layout plan	21/03/2012	21/06/2012				Further application submitted Site visit to be carried out 25/10/12
12/00041/ EBCON	Corner Meadow Farnborough Road Mollington	Breach of Condition 8 of 11/00293/F Submit details of the area of play to the LPA	21/03/2012	17/04/2012				Further application submitted Site visit to be carried out 25/10/12
12/00042/ ECOU	Corner Meadow Farnborough Road Mollington	Change of use from agriculture to use for siting of residential mobile home , residential caravans, shipping container and the laying of a hardstanding	21/03/2012	21/06/2012				Part compliance already achieved Further application submitted Site visit to be carried out 25/10/12

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
12/00050/ EUNDEV	Bishops Blaise Burdrop	Change of Use to use of the land for the storage of a shipping container	02/04/2012	30/05/2012			30 October 2012	Appeal received 2 May 2012 Written reps appeal Appeal dismissed 2 October 2012 Site visit to be carried out prior to committee
12/00062/ ECOU	Arncott Racetrack Upper Arncott	Intensification of use as a motorcross racing/ practising use	07/03/2012	02/05/2012	11/01403/ CLUE refused 12/10/2011		04/08/2012	CLUE appeal in progress, conjoined with AVDC CLUE appeal. Public Inquiry arranged for 25 July 2012 Appeal lodged against the enforcement notice 04/04/2012 to be linked to CLUE appeals Appeal dismissed and enforcement notice upheld with corrections. Clue appeals withdrawn at the inquiry CDC to write to owners to remind them of the need to submit a management plan by the end of December 2012
12/00063/ EBCON	Corner Meadow Farnborough Road Mollington	Breach of condition 5(iv) of 09/00622/F- Approved landscaping works to be completed by the end of the planting season	21/03/2012	20/11/2012				Compliance date extended

**Enforcement and Prosecution Quarterly Report – 8 November 2012**

**APPENDIX 1**

Reference & Resolution Date	Site	Unauthorised Development	Enforcement Action	Compliance Date	Related Planning Apps & Appeals	Enforcement Appeal Status	Revised Compliance	Commentary
12/00113/ EBCON	Jacks Field Launton	Breach of conditions 3 and 4 of 10/00021/F			10/00021/F			Instructions to legal 23 April 2012 Further instructions sent 20 June 2012 Notice to be served
12/00163/ EUNDEV	Land south of Family Farm Oxford Road Weston on the Green	Breach of Conditions						Instructions to legal 26 June 2012
12/00190/ ELISTED	Gate Lodge The Coach House Mill Street Kidlington	Removal of internal walls and removal of central lower part of roof truss	20/08/2012	26/04/2013	06/00675/LB	Appeal Lodged		Appeal lodged 27/09/2012
12/00237/ EBCON	Car Wash 18-18a Southam Road Banbury	Breach of conditions			11/01256/F			Instructions to legal 21/08/12 No further action required. This item will not appear next time
12/00238/ EUNDEV	The Old Courthouse 42 Crown Road Kidlington	Porches on the front of units 3 and 5 not in accordance with approved plans	5/10/2012	11/01/2013	08/01039/F			

## Planning Committee

### Decisions Subject to Various Requirements – Progress Report

8 November 2012

### Report of Head of Public Protection and Development Management

#### 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 and 24.5.12))	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

	and now complete and open for use.
	HPPDM to check legal agreement applicability and then to issue
10/00640/F (re-affirmed 24.5.12)	Former USAF housing South of Camp Rd, Upper Heyford  Subject to legal agreement concerning on and off site infrastructure and affordable housing. May be withdrawn following completion of negotiations on 10/01642/OUT
11/00524/F (6.10.11 and 24.5.12)	Cherwell Valley MSA, Ardley  Awaiting confirmation of appropriateness of the intended condition concerning radar interference.
11.01484/F (5.1.12 and 24.5.12)	Phase 3, Oxford Spires Business Park, Langford Lane, Kidlington  Subject to Env.Agency comments and receipt of Unilateral Undertaking
11/01732/F (26.1.12 and 24.5.12)	Oxford Office Village, Langford Lane, Kidlington  Subject to Unilateral Undertaking and comments of Oxford Airport
11/01870/F (22.3.12 and 24.5.12)	Banbury Gateway, Acorn Way, Banbury  Subject to completion of legal agreement concerning on-site and off-site infrastructure  Secretary of State has indicated that he will not call-in the application for his own determination
11/01878/OUT (21.6.12)	Land S Overthorpe Rd. and adj.M40  Subject to legal agreement with OCC/CDC/SNC and NCC concerning the route of a relief road, footpath issues and monitoring of travel plan etc..
11/01907/F (23.3.12 and 24.5.12)	Yew Tree Farm, Station Rd, Launton  Subject to legal agreement concerning affordable housing, and on-site and off-site infrastructure contributions

12/00198/F (19.4.12)	56-60 Calthorpe St. Banbury Subject to legal agreement concerning off-site infrastructure contributions
12/00290/F (19.7.12)	33 Oxford Rd. and land rear of 35-59 Oxford Rd, Bodicote Subject to legal agreement to secure off-site infrastructure
12/00472/F (16.8.12)	DJ Stanton (Eng) Ltd site, Station Rd. Hook Norton Subject to legal agreement concerning affordable housing, open space and infrastructure contributions
12/00555/OUT (19.7.12)	Calthorpe House, Calthorpe St. Banbury Subject to legal agreement to secure off-site infrastructure
12/01020/F (11.10,12)	10-11 Horsefair, Banbury Subject to legal agreement to secure off-site infrastructure

### **Implications**

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<b>Financial:</b>	There are no additional financial implications arising for the Council from this report. Comments checked by Kate Drinkwater, Corporate System Accountant 01295 221559
<b>Legal:</b>	There are no additional legal implications arising for the Council from accepting this monitoring report. Comments checked by Nigel Bell, Team Leader Planning and Litigation 01295 221687
<b>Risk Management:</b>	This is a monitoring report where no additional action is proposed. As such there are no risks arising from accept the recommendation. Comments checked by Nigel Bell, Team Leader Planning and Litigation 01295 221687

### **Wards Affected**

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All

## Document Information

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

## Planning Committee

### Appeals Progress Report

8 November 2012

### Report of Head of Public Protection and Development Management

#### 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

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The Planning Committee is recommended:

- (1) To accept the position statement .

#### Details

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##### New Appeals

- 1.1 **12/00884/ADV – Buck and Bell, 50-52 North Bar Street, Banbury-** appeal by Everards Brewery Ltd against the refusal of advertisement consent for Retrospective- Retention of new signage and lighting to front elevation- Written Reps
- 1.2 **12/00190/ELISTED – The Gate Lodge, 43 Mill Street, Kidlington-** appeal by the Church Commissioners for England against the service of a listed building enforcement notice alleging the alteration of the building without listed building consent by removal of part of the roof truss at first floor level to create a doorway- Written Reps
- 1.3 **12/00726/F- Sorwell, 1 Dog Close, Adderbury-** appeal by Ms I Williams against the refusal of planning permission for the erection of freestanding timber posts (Max 1500mm) connected with garden wires for climbing plants- Householder written reps

## **Forthcoming Public Inquiries and Hearings between 8 November 2012 and 6 December 2012**

- 2.1 **Inquiry commencing at 10.00am on Tuesday 20 November 2012** at the Council Chamber, Bodicote House, White Post Road, Bodicote, Banbury to consider the appeal by Mr M Horgan and Barwood Strategic Land II LLP against the refusal of planning permission of application 12/00080/OUT for residential development of up to 145 dwellings with associated access at OS parcel 5700, South of Salt Way at Crouch Farm, Bloxham Road, Banbury
- 2.2 **Inquiry commencing at 10.00am on Wednesday 28 November 2012** at the Council Chamber, Bodicote House, White Post Road, Bodicote, Banbury to consider the appeals by Bolsterstone Innovative Energy (Ardley) Ltd against the decisions of the Council to refuse to vary condition 21 of the appeal decision relating to aviation issues (11/01932/F) and the Council's refusal to discharge conditions 21 and 22 of the appeal decision relating to aviation issues (08/02495/F) associated with 4no wind turbines and ancillary development at Willow Bank Farm, Fritwell Road, Fewcott

### **Results**

#### **Inspectors appointed by the Secretary of State have:**

- 3.1 **Dismissed the appeal by Mrs Jackie Noquet against the service of enforcement notice 12/00050/EUNDEV at land at Bishops End, Burdrop, Banbury** alleging a breach of planning control - without planning permission, the change of use of the land to use for the storage of a shipping container – The Inspector stated” the container is sited in a prominent position and is a harmfully inappropriate and incongruous addition to an otherwise high quality landscape. It also harms the character and appearance of the Sibford Gower Conservation Area, within which it is sited, and the setting of the Sibford Ferris Conservation Area, whose boundary is close to where it is sited. The harm being caused to the landscape is significant, Bearing in mind that in January 2012 it was indicated to the Council that the container would remain on the land for only a further three months, and regardless of the outcome of the other appeal, the 28 days for compliance set out in the enforcement notice is reasonable and achieves an appropriate balance between the appellant's personal circumstances and the public interest in removing the harm to the landscape as soon as reasonably possible.”
- 3.2 **Dismissed the appeal by Mr Geoffrey R Noquet against the service of an enforcement notice 12/00020/ECOU at Bishops End, Burdrop Banbury** alleging a breach of planning control without planning permission, the material change of use of the land from a public house to a residential dwelling house. The Inspector's

findings are set out in summary –

**Validity of the enforcement notice-**

The lawful use as a public house has ceased because of the unauthorised change of use of the site to use as a residential dwelling house. If Mr and Mrs Noquet cease to use the whole of the building as a residential dwelling house but continue to occupy the residential accommodation that was available at the public house, without using for residential purposes the areas that had been used for the public house, that would not satisfy the terms of the notice, because their occupation would not be ancillary. However, that does not make the notice invalid. The notice is clear in what it requires.

**The appeal on ground (a) and the deemed application for planning permission –**

In this case the evidence (and the large number of third parties representations, from a wide range of local residents and including both parish councils, which are overwhelmingly in favour of the Bishops Blaize being retained as a public house) all points to the importance of the Bishops Blaize as a facility which provided food, drink, and a community meeting place. Representations referred to the Bishops Blaize being at the heart of village life. The Bishops Blaize provided a much valued facility and service and its closure has reduced the ability of the local community to meet its day to day needs. The National Planning Policy Framework therefore requires that its unnecessary loss should be guarded against.

**Viability –**

On the basis of all the evidence, the Inspector concluded that the asking price at this time, even when reduced to £450,000 was unrealistically high. The very large proportion of the asking price represented by the hope value of achieving a material change of use to residential use did not reflect the planning history of the property, or indeed the planning policy background at that time. The absence of any genuine prospective purchasers at the price being sought does not show that the Bishop Blaize was not then viable as a public house as the marketing exercise was flawed.

**Mr & Mrs Noquet's personal circumstances –**

It seems likely that given the history of Mr & Mrs Noquet's dispute with the village for the public house to reopen it would have to be under a new owner. The current value of the property is well below the price Mr & Mrs Noquet purchased the property, and so if they sold it at present market values they would clearly suffer a loss. That is the result of economic conditions and the fall in property prices. It is also a consequence of not accepting one of the offers recorded in the Fleurets letter (all but one of which were higher than the price paid by Mrs Noquet)

Mr & Mrs Noquet may have been holding out for a higher offer, but there was clearly a risk at that time that property prices might fall as well as rise, and that risk would normally be borne by the vendor. It is argued that to force Mr & Mrs Noquet either to run the Bishops Blaize at a loss or to sell at a loss would be a breach of their human

rights under Article 1 of the first protocol of the European Convention on Human Rights. But the protection of property under this provision does not prevent the State enforcing such laws as it deems necessary to control the use of property in accordance with general interest. There is no absolute right to planning permission to change the use of a property to a more lucrative use where property prices have fallen.

The effect on Mr & Mrs Noquet's home and family life must be weighed against the wider public interest. The Inspector concluded that the unauthorised change of use of the property has caused significant harm to the wider public interest. The legitimate public interest can only be adequately safeguarded by the refusal of permission for the change of use and the upholding of the enforcement notice, and dismissal of the appeal would not have a disproportionate effect on Mr & Mrs Noquet.

- 3.3 **Dismissed the application made by Mr & Mrs Noquet for a full award of costs against Cherwell District Council.** The Inspector concluded that unreasonable behaviour by the Council resulting in unnecessary or wasted expense had not been demonstrated.
- 3.4 **Allowed the application made by Cherwell District Council for a partial award of costs against Mr & Mrs Noquet.** The Inspector stated "taking all matters into account, I consider that Mr & Mrs Noquet were well able to understand the process they were involved in. Given their stated intention to instruct Counsel to represent them, they should have taken legal advice at a much earlier stage in proceedings. They had made it very clear up to the last minute that they intended to pursue the ground (d) appeal forcefully, and in the circumstances withdrawing that appeal at such a late stage in the proceedings was unreasonable. That unreasonable behaviour has led to the Council incurring wasted expense in preparing to deal with the ground (d) appeal at the inquiry. "

## Implications

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**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 Kate Drinkwater, Service Accountant: [Kate.Drinkwater@cherwelland](mailto:Kate.Drinkwater@cherwelland)

**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 and 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 and Litigation 01295 221687

**Wards Affected**

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All

**Document Information**

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