

<b>Application No:</b> 11/01878/OUT	<b>Ward: Banbury Grimsbury and Castle</b>	<b>Date Valid: 20.12.2012</b>
<b>Applicant:</b>	Barwood Developments Ltd and Kennet Properties	
<b>Site Address:</b>	Land South of Overthorpe Road and Adjacent the M40, Banbury, Oxfordshire	

**Proposal:** Erection of up to 115,197sqm of floorspace to be occupied for either B2 or B8 (use classes) or a mixture of both B2 and B8 (use classes). Internal roads, parking and service areas, landscaping and the provision of a sustainable urban drainage system incorporating landscaped area with balancing pond and bund (OUTLINE)

## 1. Site Description and Proposal

- 1.1 Located on the eastern edge of Banbury, this 28.47ha site, is bounded on its eastern edge by the M40 motorway and to the west by existing warehouse development and the Thames Water sewage works. To the north lie existing and recently constructed B2/B8 units and to the south the site to be developed is bounded by the former railway line, however a balancing pond is proposed for the agricultural field to the south of this physical boundary. Access to the site is via the existing roundabout on the Overthorpe Road and along Chalker Way. At a lower level than the surface of the M40, the site is relatively flat and mainly characterised by scrub type vegetation of no significant maturity together with trees of varying maturity and value mainly along the field boundaries. Public footpaths run adjacent to part of the western boundary of the site before crossing the site diagonally towards the motorway and then turning north along the eastern edge of the site adjacent to the motorway. A ditch runs along most of the western boundary of the site and a surface water culvert runs across the southern section of the site.
- 1.2 The application proposes to develop the site for a mix of B2 and B8 uses with ancillary B1 floorspace. The indicative plans show three different master plan options for six very large buildings arranged on the site, accessed by an extension to Chalker Way, with servicing, lorry parking and a landscaping buffer around the edge of the site. Balancing ponds are proposed to the south of the dismantled railway. The application proposes to divert the footpaths so that the route runs along the spine road and around the southern edge of the proposed buildings before rejoining the existing footpath to the east of the site and continuing in a straight line north rather than following the District boundary as it does presently. A planted landscape bund is proposed on the eastern side of the site adjacent to the public footpath. The application is submitted in outline with all matters reserved other than access.
- 1.3 The site lies largely within this Council's administrative area, however there are parts that lie within South Northamptonshire's administrative area. The parts of the site beyond this District's boundary include a small lozenge shaped area on the eastern side of the site and a larger triangular shaped area in the south eastern most corner of the site together with the area proposed for the balancing ponds. Around 9000sqm of built footprint would be situated on this land. An application for the proposed development has been submitted to South Northamptonshire

Council. Members of its committee resolved to approve the application subject to a number of conditions and a Legal Agreement on 15 March 2012, however subsequent events during the processing of the application has resulted in the requirement for the application to be reheard by South Northamptonshire Council's committee Members on 14 June 2012.

- 1.4 Members will recall giving consideration to this application at the Committee meeting on 22 March 2012 at which time they resolved to defer the application to allow officers time to provide further information on traffic management issues, the potential for a relief road and archaeological matters.

## **2. Application Publicity**

- 2.1 The application has been advertised as a major development, a departure from the development plan and as affecting a public right of way. Site notices were posted around the site adjacent to the Overthorpe Road/Chalker Way roundabout and at various points along the public footpath which runs around and through the site. An advertisement was published in the local press on 19 January 2012. The final date for comment was 09 February 2012.

- 2.2 Ten letters of objection have been received from third parties raising objections on the following summarised grounds (see Public Access for full content):

- Substantial increase in HGV and car movements on Ermont Way and surrounding roads
- Will result in major hold ups and road safety issues
- Will damage current businesses
- Discourage customers
- Roads already at capacity at peak times
- Congestion leads to gridlock
- No changes/improvements to roads planned
- Businesses will have to relocate
- Grossly inadequate infrastructure for current volumes of traffic
- Thorpe Way Industrial Estate already used as a lorry park – this will be exacerbated
- Roads in need of repair go unaddressed
- Warehousing is a second option to manufacturing
- Heavily populated residential area (noise and disturbance/road safety)
- Acceptable alternative routes to the area are required
- Minor roads towards Overthorpe and King Sutton already used by HGVs as a rat run
- Not aware of any reasonable consultation process
- Major changes required to supporting infrastructure
- Welcome additional employment opportunities
- Dedicated slip road required

A further letter of representation has been received from Councillor Ann Bonner (ward member) who objects to the proposals on the following summarised grounds:

- Number of additional vehicular movements
- Original designation of land (not B8)
- No opportunity for relief road

- Vastness of proposals
- Loss of valuable industrial land to warehouses
- Town requires more diverse mix of industries and companies with more technical/scientific base
- Smaller units required
- Non-aspirational jobs for school leavers
- Few jobs in warehouses
- No lorry park – environmental health problems in laybys
- Area doesn't have infrastructure for HGVs
- Improvements on Middleton Road will be undone = traffic congestions
- Environmental effect – higher levels of pollution.

### 3. Consultations

- 3.1 **Banbury Town Council** objects to the application for the following reasons:
- Site has potential to deliver SE relief road (priority of the town council and supported by OCC)
  - Access strip needs to be fully protected and road needs to be built to standard of Ermont Way without junctions
  - Increased B8 = fewer employees and not very skilled (detriment to Banbury's manufacturing heritage)
  - Town needs more diverse mix of jobs
  - Banbury doesn't have infrastructure to cope with number of HGVs associated with the development
  - HGV parking concerns
  - Air quality concern/pollution levels exacerbated.
  - Overnight parking outside of the site leads to obstruction, litter, environmental health issues. TVP are concerned
- 3.2 **Bodicote Parish Council (CDC)** comments that the area is susceptible to flooding. As the site is next to the motorway HGVs wont need to go through Banbury town centre.
- 3.3 **Warkworth Parish Council (SNC)** raises concerns about traffic generation, traffic routes from the site, some of which are unsuitable for HGVs (weight and height restrictions). They make suggestions for carriageway improvement and traffic lights ensuring easy passage to M40. They state that a relief road would be the best solution and the route should be preserved for the future.
- 3.4 **Overthorpe Parish Council (SNC)** raises the following concerns:
- Increase in traffic using Overthorpe Road particularly at peak times
  - Current road infrastructure insufficient to accommodate
  - Vehicle speeds already excessive
  - Little/no protection for cyclists/pedestrians
  - Development increase likelihood of accidents
  - Premature degradation of new road surface
  - 'Access Only' often abused: this will compound problem.
  - Lack of clear signage. No access to M40 through Overthorpe should be properly addressed.
  - Increase in parking of HGVs on road overnight.
- 3.5 **Chacombe Parish Council (SNC)** no comments to date

- 3.6 **Middleton Cheney Parish Council (SNC)** no comments to date
- 3.7 **Head of Strategic Planning and the Economy (Planning Policy Officer CDC)** states that the application largely accords with Policies SP3 and RE3 of the South East Plan and PPS1 and PPS4 however this is subject to matters of flood risk, justification for extending the site beyond allocated land and the nature of the employment (original preference B1/B2). Following the publication of the NPPF, HSPE considers that the weight to be given to development that creates economic growth is increased by the NPPF. However the NPPF refers to the promotion of specific sectors and therefore the concern expressed in the original response with regards to the balance of employment uses are still relevant.
- 3.8 **Head of Strategic Planning and the Economy (Planning Policy Officer SNC)** No policy objection. Proposal would not undermine important open gap providing development does not breach M40.
- 3.9 **Head of Strategic Planning and the Economy (Design and Conservation Team Leader CDC)** considers the application to be contrary to planning policy for the following reasons:
- Very prominent site
  - Important that it presents an attractive and welcoming image to help promote the town
  - 'Appropriate transition between town and country' (Design and Access Statement) not achieved
  - High density (leaving little space for landscaping and amenity)
  - SPD guidance re height and density not followed
  - Inward looking with little attempt to address M40
  - Entire frontage to M40 marked by service yards with little room for screening
  - Not convinced that disused railway will effectively screen
  - Dev not designed around retention of historic right of way
  - Layout should build on landscape features not obliterate them
  - 10m buffer insufficient to mitigate. Minimum of 20m required adjacent M40 (C8 aCLP)
  - Option for relief road should not be precluded by development
  - Proposals constitute over development
- 3.10 **Head of Public Protection and Development Management (Environmental Protection Officer CDC)** raises no objections subject to conditions which cover further investigative works that are required in relation to developing the site.
- 3.11 **Head of Public Protection and Development Management (Environmental Protection Officer SNC)** Not likely to cause any significant pollution impacts in South Northamptonshire District if reasonable precautions taken.
- 3.12 **Head of Public Protection and Development Management (Anti Social Behaviour Manager CDC)** Appropriate noise levels and lighting design to be achieved at the detailed planning stage.
- 3.13 **Head of Public Protection and Development Management (Health Protection Officer SNC)** Scheme should be designed to meet standards of Health and Safety Executive guidance document HSG136 'Workplace Transport Safety'.

- 3.14 **Head of Strategic Planning and the Economy (Economic Development Officer CDC)** states that the principle of employment generation is established through the non-statutory Cherwell Local Plan. However makes the following remarks:
- Cherwell Economic Development Strategy looks for number of jobs and variety.
  - Should support needs/demands of local businesses. Canalside business will be looking to relocate locally had hoped this proposal could meet their needs.
  - Design should be of higher quality to inspire pride, visitors and future investors
  - Travel Plan doesn't make allowances for 1000 commuters
  - Relief Road should not be overlooked
  - Reserved Matters should address all concerns raised.
- 3.15 **Head of Strategic Planning and the Economy (Economic Development Officer SNC)** is supportive of scheme which would generate a significant number of jobs and the uses are appropriate for this strategic location. Query over number of jobs created and suggested s106 requirements re local workforce and training initiatives
- 3.16 **Head of Environmental Services (Tree Officer CDC)** objects on following grounds:
- Every significant oak tree within the footprint of the proposed buildings has been removed including those identified as being worthy of retention
  - Emergency TPO placed on the rest of the trees
  - Insufficient detail – no method statement and no protective fencing.
- Landscape proposals are not enough to mitigate against loss or provide green buffer to M40.
- 3.17 **Head of Environmental Services (Landscape Officer CDC)** states that:
- No consideration has been given to the impact on the Oxford Canal and railway corridor
  - Detailed landscaping proposals required
  - Further landscape mitigation is required
  - Gently undulating bund visually better than a uniform bund
  - Ecological enhancements supported
  - One years maintenance required together with management plan
- 3.18 **Head of Community Services (Nature Conservation CDC)** states that an incomplete summary of wildlife value is available. The work did not cover all of the site and was carried out at sub-optimal times. No European Protected Species were noted however reptiles are likely to present. Relatively small amount of ecological enhancement proposed given the scale of the scheme. Green roofs are suggested. Conditions relating to biodiversity enhancement and reptile mitigation are recommended.
- 3.19 **Head of Community Services (Rights of Way Officer CDC)**
- Footpath diversion required to enable development.
  - No Public Rights of Way Statement submitted
  - PPO could be justifiable given nature of development however insufficient information to assess suitability.
  - Detailed proposals for footpath diversion required if approved.
  - Complicated by fact that diversion would cross border into South Northamptonshire's district

- 3.20 **Head of Recreation and Health (Arts and Tourism Manager CDC)** requires an element of public art linked to the development
- 3.21 **Oxfordshire County Council** recommends to Cherwell District Council that, given that the need for economic development is so important at the current time, it does not object to the development proposed provided that:
- a) permission is subject to a legal agreement to secure contributions to improvements to infrastructure and transport measures to mitigate the impact of the development; and
  - b) permission takes into account recommendations from the County Council as Highway Authority on an appropriate split of employment use classes for the gross floor area of the proposed development site.

It is also recommended that the County Council informs Cherwell District Council that, whilst the need for economic development is supported, there are wider considerations. The County Council shares the concerns raised by local Councillors and, hence, would ask Cherwell District Council to take these into account when setting any planning conditions.

- 3.22 **Local Member View** summary of to Member's comments:
- a. could lead to an imbalance of unskilled warehouse/distribution (class B8) employment for Banbury, contrary to the objectives of Brighter Futures in Banbury Programme;
  - b. could give over too much valuable industrial land to warehousing, inhibiting relocation of businesses currently occupying sites within the Canalside regeneration area;
  - c. could generate large numbers of HGV trips on the local road network with consequent air quality and lorry parking problems affecting local residents; and
  - d. would include visually intrusive, large scale buildings

3.23 **OCC Transport**

Transport Assessment

- There are traffic restrictions on surrounding roads
- No alternative routes for definitive footpaths shown
- Construction management travel plan required
  - Wheel washing
  - Routeing
  - Delivery times

Traffic Generation, Distribution and Modelling

- 50:50 B2/B8 split required
- S106 contributions required towards sustainable highway infrastructure

Public Transport

- Nearest bus service beyond recommended walking distances
- Travel plan must take robust approach

Parking

- Parking levels to be conditioned

#### Layout

- Road = acceptable width
- Footway to be same as existing
- Tactile paving and crossing points required
- Loading/unloading/manoeuvring/waiting layout to be conditions
- Private Road agreement required

#### Relief Road

- Long term aspiration for OCC for town's future growth (LTP3)
- Previous application did not prejudice relief road
- As proposed application will terminate future delivery
- Relief road not considered necessary to serve the development as there is exiting capacity within the network

#### Routeing Agreement

- Already restrictions over HGVs through residential areas and site provides own parking facilities for HGVs
- Routeing agreement not necessary

#### Travel Plan

- Shower facilities essential to encourage walking and cycling
- Travel Plan coordinator to be identified and funded
- 1 x Travel Plan required per unit
- Signed, safe and convenient walking and cycle routes required to site.

#### Conclusion

- Not sustainable to recommend refusal

3.24 **OCC Archaeology** states that the site has been the subject to an archaeological evaluation which did not record any archaeological features. Therefore no further work is required.

3.25 **OCC Footpaths** Proposed diversions are reasonable. £50,000 is required for the diversions and to formalise access to former railway line

3.26 **OCC Drainage** Roof water and hard standing run off to go to soak away or SUDs and not to highway drainage. Full drainage plan /calculations required

3.27 **Northamptonshire County Council** comments as follows:

- No measures re impact on Northamptonshire or enhancing sustainability of site
- Poor location in terms of encouraging non-car modes
- Existing footways limited
- Limited safe crossing points
- Limited public transport service
- Majority of site located in excess of reasonable walking distance from bus services
- Travel Plan should indicate 20% shift away from single car occupancy trips but only shows 10% (should be amended accordingly)
- Indicative layout prevents buses entering and turning
- Basic level of sustainability to be achieved by
  - Bus infrastructure
  - 2 x bus stops
  - Pedestrian cross facilities and footway connections

- Financial contribution of £75,000 towards bus service
- Walking/cycling audit to improve measures
- Revised travel plan
- Signage strategy required
- £30,000 toward traffic calming in Overthorpe should rat running become a problem
- Junctions indicated at over capacity in 2016 yet no mitigation proposed.
- 2021 as future year should be assessed (not 2016)

Conclusion

No objections in principle subject to agreement of the above, S106 and conditions.

- 3.28 **NCC Archaeology** Part of site used for munitions manufacturing during first world war. Recording of remains required. Proposals will have a detrimental impact upon any archaeological deposits on the site. Therefore detailed investigation and recording required.
- 3.29 **OCC Developer Funding Team** No objections or requirements
- 3.30 **NCC External Funding Partnership** considers that a contribution towards Fire and Rescue would be necessary.
- 3.31 **Highways Agency** states that the application should be refused or granted subject to the following condition: Not more than 5% B1 and not more than 50% B2.
- 3.32 **Police Architectural Liaison Officer** states that an addendum to the Design and Access Statement is required in terms of creating safe/sustainable places/environments. Units would be exposed on all sides and therefore would be vulnerable to crime. Security provisions are vital in terms of reducing opportunities for crime.
- 3.33 **Environment Agency** raises no objections as the submitted flood risk assessment is sufficient. It demonstrates that the development will not increase flood risk. Some concerns raised about the proposed pumped system. Conditions recommended relating to development being carried out in accordance with FRA, detailed design, surface water drainage scheme, management of flows in western ditch and fluvial flood storage.
- 3.34 **Thames Water** advises in relation to ground water, surface water drainage, waste water infrastructure and water pressure.
- 3.35 **BBOWT** does not object in principle, appropriate location for development of some form. Some concern about the impact upon biodiversity, however this has already been highlighted by the Council's ecologist. No reference is made to biological records which should be an elementary first stage in any ecological impact assessment. The potential wildlife site on the SNC part of the site has not been fully considered, therefore a thorough botanical survey should be carried out.  
 Reptiles - Limitations of reptile survey  
 Great Crested Newts - Limitations of GNC survey (evidence is effectively worthless), but site is unlikely to support GNC  
 Bats - Felling of trees does not represent good practice. Conclusions about reduced bat activity are spurious



Conditions should include:  
Botanical survey  
Reptile survey  
Ecological management plan  
Biodiversity enhancement plan

3.36 **Banbury Civic Society** objects on the following grounds:  
Banbury Civic Society

Objects on the following grounds

- Contrary to the Development Plan
  - not allocated for development in any adopted plan.
- Scale and Visual Impact
  - giant warehouses for B8 use
  - Service yards facing motorway and completely inadequate screening
  - Visual impact of existing sheds is already a matter of grave concern and regret
  - Difficult to reconcile the prospect of a series of new additions
- Transport
  - Proposal does not leave adequate space for the future widening of the proposed service road for a south to east link road
- Sustainability
  - No proven need for commercial development at this scale
  - Contrary to 'brown field first' (Sapa site) and would prejudice regeneration of Sapa site
  - B8 is unsustainable
  - Loss of substantial Oak tree that was worthy of retention and had potential for bat roost.
  - Landscape proposals do not go far enough to mitigate against loss

Would strongly support B2 subject to design and environmental mitigation

3.37 **Ramblers Association/Oxford Fieldpaths Association/Open Spaces Society**  
no comments to date

#### 4. Policy Considerations

##### **National Planning Policy Framework**

Achieving sustainable development  
Building a strong competitive economy  
Requiring good design  
Promoting health communities  
Conserving and enhancing the historic environment  
Conserving and enhancing the natural environment  
Promoting sustainable transport  
Meeting the challenge of climate change, flooding and coastal management

##### **South East Plan 2009**

Policy SP3	Urban Focus and Urban Renaissance
Policy CC1	Sustainable Development
Policy CC2	Climate Change

Policy CC7 Infrastructure and Implementation  
 Policy RE1 Contributing to the UK's Long Term Competitiveness  
 Policy RE3 Employment and Land Provision  
 Policy T1 Manage and Invest (Transport)  
 Policy T4 Parking  
 Policy NRM1 Sustainable Water Resources and Groundwater Quality  
 Policy NRM4 Sustainable Flood Risk Management  
 Policy NRM5 Conservation and Improvement of Biodiversity  
 Policy NRM9 Air Quality  
 Policy NRM10 Noise  
 Policy C4 Landscape and Countryside Management  
 Policy C5 Managing the Rural-Urban Fringe  
 Policy BE1 Management for and Urban Renaissance

**Adopted Cherwell Local Plan 1996 Saved Policies**

Policy S10 Development in Banbury commercial areas  
 Policy TR1 Transportation funding  
 Policy C1 Protection of sites of nature conservation value  
 Policy C2 Protected species  
 Policy C4 Creation of new habitats  
 Policy C7 Landscape conservation  
 Policy C8 Sporadic development in the open countryside  
 Policy C9 Scale of development compatible with a rural location  
 Policy C17 Enhancement of the urban fringe through tree and woodland planting  
 Policy C25 Scheduled ancient monuments and archaeological sites  
 Policy C28 Standards of layout, design and external appearance  
 Policy ENV1 Development likely to cause detrimental levels of pollution  
 Policy ENV7 Development affecting water quality  
 Policy ENV12 Development on contaminated land

**Non-Statutory Cherwell Local Plan 2011**

The non-statutory Cherwell Local Plan is not part of the statutory development plan but it has been approved as interim planning policy for development control purposes and remains to be a material consideration even though there is now a draft Cherwell Local Plan.

**Draft Cherwell Local Plan (dCLP) 2012**

The draft Cherwell Local Plan 2012 was approved by Members of the Executive for public consultation on 28 May 2012. As this decision is very recent, and no further action has yet been taken, the Plan carries very little weight. Of note within the Plan however is Policy Banbury 6: Employment Land West of M40, which seeks to allocate the land to which the site relates for employment generating development. Policies within the draft Plan are also referred to in relation to matters where the adopted Plan is silent.

## 5. Appraisal

### 5.1 PLANNING HISTORY

- 5.1.1 In relation to the northern quarter of the site and within Cherwell District Council's administrative area only, Members resolved to approve planning application 10/01823/OUT for 19,000sqm of B2/B8 development subject to a legal agreement to secure transport infrastructure contributions. The legal agreement was not finalised and the application has recently been withdrawn. There is no other planning history relating to the site.
- 5.1.2 Planning permission has recently been granted for B2 and B8 uses on the site to the north which are being occupied by Firstline and Goodrich (applications 10/01868/HYBRID and 11/00867/REM refer).

### 5.2 KEY ISSUES

- 5.2.1 The application stands to be assessed against the following key issues:
- Principle
  - Transport Impact
  - Landscape Impact and Design
  - Trees
  - Rights of Way
  - Flood Risk and Drainage
  - Land Contamination
  - Air Quality
  - Noise
  - Archaeology
  - Ecology
  - Crime Prevention
  - Public Art
  - Planning Obligation

### 5.3 PRINCIPLE

- 5.3.1 Since Members gave consideration to the application on 22 March, the National Planning Policy Framework (NPPF) has been published and is now a material consideration. The main theme of the NPPF is a presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with the development plan without delay, and where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or where specific policies in the NPPF indicated development should be restricted.
- 5.3.2 Based on advice within the NPPF, the Council's adopted Cherwell Local Plan 1996 is considered to be out of date (as it was adopted pre-2004) however it advises that due weight should be given to relevant policies in existing plans (regardless of their age) according to their degree of consistency with the NPPF (the closer the policies in the plan to the NPPF, the greater the weight that may be given).

With regard to the draft Cherwell Local Plan 2012, the NPPF states that decision takers may give weight to relevant policies according to the stage of preparation (the more advanced the greater the weight that may be given). The draft Cherwell Local Plan is in its very early stages and as such the Officer view is that it should be given very little weight.

- 5.3.3 The land in question is not allocated for development in the adopted Cherwell Local Plan 1996, however approximately one half of the site is allocated for employment use (B1/B2) in the non-statutory Cherwell Local Plan (adopted as non-statutory policy in 2004). Although this Plan did not proceed to adoption, the principle of employment use on this site had been identified as being appropriate through the evidence base supporting the non-statutory Cherwell Local Plan, which subsequently led to its draft allocation for employment use. In addition to this, the draft Cherwell Local Plan 2012 identifies the site under Policy Banbury 6 (Employment Land West of M40) which seeks to deliver this land for economic development in the interest of delivering jobs and investment in a highly sustainable location. The expected land uses include B1, B2 and B8. As referred to above, this plan can be given very little weight, however it does demonstrate the Council's intentions for the land which reflects the evidence base which has informed the content of the Plan.
- 5.3.4 With regard to the acceptability of the proposal in principle, the NPPF states that the government is committed to securing economic growth in order to create jobs and prosperity and to ensuring that the planning system does everything that it can to support sustainable economic growth. It continues by stating that Local Planning Authorities should plan proactively and investment in business should not be overburdened by the combined requirements of planning policy expectations, and that potential barriers to investment should be addressed.
- 5.3.5 HSPE's original advice was that from a planning policy perspective, the proposal accords largely with Policies SP3 and RE3 of the South East Plan and the National Planning Policy context. However consideration needs to be given to flood risk, the justification for (and adverse impacts of) developing land beyond the allocation and the nature of the employment use proposed given earlier indicated preferences for B1 and B2. HSPE considers that the weight to be given to development that creates economic growth is increased by the NPPF. However the NPPF refers to the promotion of specific sectors and therefore the concern expressed in the original response with regards to the balance of employment uses are still relevant.
- 5.3.6 Flood risk is addressed below at para 5.8, where it is stated that the proposal does not pose a risk.
- 5.3.7 The justification for developing this land is employment generation and it is not considered that there would be any adverse impacts of developing the land beyond the non-statutory Cherwell Local Plan allocations despite it not being allocated in the development plan and that it would encroach into open countryside. The land in question is no longer farmed, as access to it is restricted and the development would be situated between the M40 and existing industrial and sewage works land, which already have an urbanising affect on the site's context. The southern extent of the site would be bounded by the former railway line, which is considered to be a defensible boundary. Other matters of detail are addressed below, however strategically and as a matter of principle, it is not

considered that the development of the land would cause material harm.

- 5.3.8 Turning to the nature of the employment use proposed, the Employment Land Review (2012), undertaken to inform new planning policies in the Cherwell Local Plan Local Development Framework (LDF), highlights the strong market demand in Banbury for B8 units, and reports on future projected growth in the warehousing sector in the district. Importantly it also highlights the increase in employment densities (jobs per square metre of floorspace) for B8 use. Whilst HSPE welcomes some element of B8 in the proposal, local [draft] planning policy continues to promote a mix of employment uses on the site (including B2 use), as part of delivering a diverse and resilient economy (as envisaged in the Council's Economic Development Strategy).
- 5.3.9 Consultee's and Members' concerns are noted about extensive B8 floorspace and the subsequent job numbers and job type created. However the application states that around 1000 new jobs would be generated by the development, and the applicant's agent has provided supporting information which sets out that whilst logistics and distribution fall into the B8 use class, the sector has become a vital part of the UK economy employing 8% of the UK's workforce which is equal to the construction sector and higher than the Financial Services Sector (estimated at 4% of the UK's workforce).
- 5.3.10 This information supports a shift in the characteristics of B8 which have become more sophisticated (more skilled jobs) and requiring a greater number of employees. For this reason and in light of the current economic downturn together with the content of the NPPF, the Employment Land Review and the draft Cherwell Local Plan 2012 policy which all recognise the importance of creating jobs and achieving sustainable economic growth, officers consider that, in spite of the direction in the draft Cherwell Local Plan 2012 towards mixed development, the creation of jobs and the subsequent strengthening of the employment sector is the key issue and must be supported even if this is as a result of a greater amount of B8 use across the site. For this reason, it is considered that the benefits of securing sustainable economic development and significant job creation in accordance with the NPPF outweighs a requirement to specifically secure B1/B2 and mixed use development as set out respectively in the non-statutory Cherwell Local Plan and the draft Cherwell Local Plan. As such it is considered to be unreasonable to restrict the extent to which the floorspace of the proposed development is utilised for B8 uses by a planning condition.
- 5.3.11 For the reasons stated, officers consider that the proposal is acceptable in principle as it complies with Government guidance on building a strong competitive economy contained within the NPPF, Policies CC1 and RE3 of the South East Plan 2009, Policies EMP1 and EMP2 of the non-statutory Cherwell Local Plan and Policy Banbury 6 of the draft Cherwell Local Plan 2012. The finer detail of the application is discussed below.
- 5.3.12 Due to the fact that the land is not allocated for development in the adopted Cherwell Local Plan 1996, if Members resolve to approve the application, this would be a departure from the Development Plan and as such departure procedures must be followed.

## 5.4 TRANSPORT IMPACT

- 5.4.1 The site would be accessed by the existing roundabout junction on the Overthorpe Road, which was constructed as part of the previously approved planning application. This roundabout has been adopted by the Local Highway Authority and also provides access to the industrial units located off Lombard Way. The roundabout leads to Chalker Way, the existing spine road into the site which remains unadopted. The two highway routes that can be taken from the site include travelling east along the Overthorpe Road towards the villages of Overthorpe, Warkworth and Kings Sutton, or west and then to the north along Ermont Way leading to either the M40 or Banbury.
- 5.4.2 With regard to the impact of the development upon the existing network, given the characteristics of the proposed uses, B2 use would typically generate a greater number of vehicular movements and as such would have a greater impact upon the transport network. The Transport Assessment submitted with the application gives consideration to the likely traffic generation arising from the site. It does not model or assess a scenario where the whole of the floor space is utilised for B2 uses, instead two different use scenarios are modelled. The use scenario modelled with the greatest likely impact on the highway network was a scenario where no more than 50% of the floorspace of the buildings would be used for B2 use. Both the Highways Agency and the County Council have therefore assessed the application with this in mind and the rest of the site being used for B8. Based on this scenario, the County Council accepts that the proposal will take up a significant amount of the existing local highway network capacity, but not enough in their opinion to justify a refusal on highway grounds or seeking capacity infrastructure improvements from this application. It is concluded therefore that the proposal would not cause significant harm to the capacity of the existing network however this is subject to a financial contribution to be paid by the developers towards sustainable highway infrastructure. The Highways Agency recommends that the application should only be permitted if the development is subject to a condition restricting the B2 use to a maximum of 50% which is required to limit the impacts on the highway network to the predictions in the Transport Assessment. The Local Highway Authority agrees with this recommendation stating that any increase in favour of a B2 use will mean that a review of the impact upon the highway network would be required.
- 5.4.3 Referring to the specifics of the scheme, the Local Highway Authority advises that given the floor space proposed, there would be adequate parking and manoeuvring space for both cars and heavy goods vehicles within the site and that furthermore there would be adequate space for overnight parking and waiting for all heavy goods vehicles associated with the site. The current concerns about the local highway network being used as a lorry parking area would not therefore be compounded by this development. Full details of the layout of loading, unloading, waiting and manoeuvring space to be assessed at the reserved matters stage.
- 5.4.4 With regard to the sustainability of the site, whilst the site's location means that it is beyond what is considered to be reasonable walking distance of the nearest bus stop, the nearest bus stop is within 1km of the site and is accessible via Ermont Way. Furthermore, the site is within walking distance of local residential areas, and within approximately 1.5km's walk from the train station and town centre (along Causeway in Grimsbury and onto Overthorpe Road). To support

and enhance the existing travel choices to the site, the Local Highway Authority states that a detailed and robust Travel Plan will be required at the time of any reserved matters application which would set out measures to encourage walking and cycling to the site, which would be coordinated by the developer and the Plan would be monitored by the County Council. With these measures in place, it is considered that the development site, although not wholly sustainably located in terms of transport choices alternative to the private vehicle, there is the potential to encourage and build upon the choices available which will be secured via condition through the travel plan, which balanced against the benefits of the employment generation on the site is considered to be acceptable.

- 5.4.5 Consideration has been given to securing a routeing agreement to and from the site for HGVs, however the Local Highway Authority believes that there are sufficient restrictions in place in the form of weight and height limits along the Overthorpe Road and an access only restriction into Overthorpe itself. Overthorpe is perhaps the most vulnerable to increased traffic movements as the village provides alternative access to the M40 rather than using Ermont Way in times of heavy traffic. For this reason and in spite of the access only restriction, NCC considers it necessary to secure £30,000 from the developer to fund traffic calming in the village in the event that traffic increases as a direct result of the development. NCC also considers it necessary to require £75,000 towards a bus service and to secure a signage scheme clearly directing traffic along Ermont Way from the site. Negotiations are ongoing with the developer in relation to these matters.
- 5.4.6 A routeing agreement for construction traffic is required by Oxfordshire County Council which the developer is in agreement with and this would be secured by condition.
- 5.4.7 Reference is made by a number of consultees that land must be reserved to form part of a south eastern relief road from the new roundabout on Overthorpe Road, running adjacent to the application site and then around the southern side of Banbury. This is based on significant concern about congestion within the town centre and inner relief roads. The adopted Oxfordshire Local Transport Plan (LTP) 2011-2030 sets out strategic targets for Banbury which include making the best use of existing road space, making improvements to junctions and roads within the town and working in partnership with the Highways Agency and Cherwell District Council as required. The Plan states that when resources and opportunities allow, the targets will be achieved by a number of objectives which include continuing to promote the long-term aspiration of Banbury relief roads (although these are major infrastructure projects likely to require Central Government funding that will not be available within the period of this Plan).
- 5.4.8 Notwithstanding the relatively vague wording of the LTP, Members made it clear at the previous meeting that they held serious concerns over the fact that the realisation of a relief road could be permanently lost if the site were developed as indicatively indicated on the submitted drawings and this concern formed part of the reason for deferring the application at the last meeting.
- 5.4.9 Since the last meeting, Cherwell District Council has commissioned work towards developing a Master Plan for Banbury which has included up to date transport studies and modelling to identify the transport infrastructure that is required to facilitate sustainable development in the District up to and beyond 2031. Policy

SLE4 of the draft Cherwell Local Plan states that the Council will support key transport links as identified in the Local Transport Plan to deliver key connections, to support modal shift and to support more sustainable locations for employment and housing growth. It also states that following consideration of the results of “areas of search” key transport proposals will be supported including the Banbury inner relief road.

- 5.4.10 The future of the Banbury relief road therefore lies with the work currently being carried out to inform the Banbury Master Plan. Should there be clear and robust evidence that a relief road would be required within the plan period, Policy SLE4 (dCLP) remains relevant to this application, supported by Policy Banbury 6 (dCLP) which relates to the site in question and recognises the need to secure development that reserves the potential for a future highway connection to bypass the town centre. Members must be aware however that if this evidence is not forthcoming as a result of the Master Plan work, the Council would not be in a strong policy position to secure the safeguarding of the road at the present time due to the very little weight that the draft Cherwell Local Plan carries and given the wording of the LTP, which clearly states ‘when resources or opportunities allow’ and the direct reference to the requirement for Central Government funding which will not be available within the plan period.
- 5.4.11 Nevertheless, given the Members’ reasoning for deferring the application at the March meeting, the applicant has agreed to amend the indicative layout for the site in order to allow for a route for a future road to be safeguarded for the length of the Plan period (2030) plus five years.
- 5.4.12 The Local Highway Authority welcomes the safeguarding of the route at this stage whilst the Master Plan work is being carried out, and if it is proven that the relief road is required, the safeguarding of the route would outweigh the original requirement for a monetary contribution towards sustainable transport infrastructure. However if the Master Plan work proves that a relief road is not required, as an alternative, they will require an appropriate contribution towards transport infrastructure, to make the development acceptable in planning terms, the amount for which would need to be negotiated.
- 5.4.13 Following the advice of the Local Highway Authority that the existing highway network is suitable and has capacity for the proposed development subject to the imposition of a condition restricting the use of the site to no more than 50% B2 of the total floorspace as required by both the Highways Agency and Oxfordshire County Council as Highway Authority. With the safeguarding of a route for an inner relief road for the duration of the current plan period, or where that is not required as a result of the Master plan work, securing a contribution towards highway infrastructure, officers are satisfied that the proposed development would not have a detrimental transport impact. Access to the site (which is a matter of detail being considered at this stage) is considered to be acceptable. Therefore, and subject to all other necessary conditions and the developer entering into an agreement setting out the obligations set out above, Officers consider that the application complies with Government guidance on promoting sustainable transport contained within the NPPF, Policies T1 and T4 of the South East Plan and Policy TR1 of the adopted Cherwell Local Plan.



## 5.5 LANDSCAPE IMPACT/SCALE, LAYOUT AND DESIGN

- 5.5.1 This undeveloped site is visible from many vantage points, including from the adjacent countryside and rights of way immediately adjacent, and from the Oxford Canal. Some of the key vantage points due to being on higher ground are from Bankside (within the Cherwell District), from the A422 and from the Overthorpe Road on approach to Banbury (both within South Northamptonshire). Clear views of the site are also gained from the motorway given its direct relationship with the site.
- 5.5.2 In terms of landscape impact, policies in the adopted Cherwell Local Plan seek to protect the topography and character of the landscape and limit sporadic development beyond the built up limits of settlements, including adjacent to the motorway. They also seek to resist developments that are incompatible with the a rural location by reason of their type, size or scale and aim to conserve and enhance the environment within locally designated areas of High Landscape Value (the Cherwell Valley in this case) and by seeking opportunities to secure the enhancement of the urban fringe in connection with new development.
- 5.5.3 Whilst the site is situated beyond the built up limits of Banbury and is therefore situated within the open countryside, the site is quite clearly contained between industrial development to the north and the west and the urbanising effect of the M40 to the east. The wider open countryside extends to the south, however even in this direction, the site is contained by the former tree lined railway embankment. Given the containment of the site on three sides and its proximity to the existing urban edge, it could not be concluded that the proposal represents sporadic development into the open countryside thus complying with Policy C8 of the adopted Cherwell Local Plan. Furthermore, although the land beyond the site to the south is quite obviously rural in nature, the site lies within the visual context of the backdrop of Banbury, particularly its industrial areas, which include large industrial buildings, and as such although visible from the rural area, the commercial development proposed would, subject to scale and design (which is discussed below) be compatible with its immediate surroundings and would not therefore harm the immediate environment which lies within an Area of High Landscape Value in compliance with Policies C9 and C13 of the adopted Cherwell Local Plan. The former railway embankment represents a defensible boundary which includes some existing screening. A comprehensive landscaping scheme is currently being discussed and would be secured via condition with a long term management plan which would assist with enhancing the urban fringe and integrating the development with its rural surroundings to the south in accordance with Policies C14 and C17 of the adopted Cherwell Local Plan.
- 5.5.4 Turning to scale, the buildings immediately to the north are those for which planning permission has recently been granted (for Firstline and Goodrich) are both in the region of 12,000sqm and 12.5m in height. To the west of these new buildings is the 3663 building which is approximately 16,000sqm and between 12 and 14m in height.
- 5.5.5 The concept of large industrial units in this location is therefore established and for this reason, together with the Council's objective for employment generating development on the site, such an approach is considered to be appropriate in principle. However the buildings as shown indicatively are particularly large; some of them shown as far greater in footprint than the existing buildings and they are

indicated as being up to 19m in height, which would dominate the scale of the surrounding buildings and views of the site.

- 5.5.6 The footprint and height of the buildings has generated much concern amongst consultees and third parties. The Council's Design and Conservation Team Leader in particular has reservations about the scheme, raising concerns about the indicative density, scale and layout of the buildings given the prominence of the site, together with limited opportunities for comprehensive landscaping and failing to achieve a successful transition between town and country. She refers to the Council's adopted SPD 'Design and Layout of Employment Sites' which gives guidance in relation to the height of buildings (16m as an absolute maximum) and their distance from the boundary (a ratio of 1:2 - height: distance to boundary). She also made reference to the fact that the proposal originally indicated that the entire frontage to the M40 would accommodate service yards with little room for screening.
- 5.5.7 It is recognised that the site is not particularly sensitive due to its location adjacent to existing industrial development and the M40 and therefore the extent of building coverage across the site is considered to be appropriate, however officers consider that it would be necessary to restrict the height of the buildings at the outline stage to no more than 16m in height. This would allow the developer some flexibility when marketing the site to potential occupiers; however the overall height limitation would better respect the scale of the surrounding development.
- 5.5.8 With regard to layout, in particular the positioning of the service yards, the developer has recognised Officers' design concerns and has provided some alternative layouts which indicate the services yards to the frontage of the buildings, which would improved the appearance of the site when viewed from the motorway. Further discussions have taken place in relation to the design and width of the landscape buffer in attempt to address concerns that were raised by Members of the SNC committee meeting.
- 5.5.9 With regard to the appearance of the buildings it would be critical to ensure that they are designed and finished (materials and colouring) to reduce the overall visual impact of the proposal (details to be secured at the reserved matters stage) and a comprehensive and well designed landscaping scheme would be paramount to ensuring that the buildings are integrated into their surroundings.
- 5.5.10 Previous comments received from the Council's Landscape Officer stated that further consideration needs to be given to the impact of the proposal upon the Oxford Canal and the railway corridor and that further landscape mitigation is required. A gently undulating bund rather than a uniform bund would be more visually appropriate. If the application is approved, landscaping would be dealt with at the reserved matters stage and an exceptional landscaping scheme would be expected together with a comprehensive management plan. These matters have been discussed further with the developer and are currently being addressed.
- 5.5.11 Officers consider that an appropriate scheme can be achieved in scale and design terms and that subject to the detail of each building, particularly, scale, design and finishing (including colour finish) together with a comprehensive landscaping scheme the application complies with Government guidance on requiring good design and conserving and enhancing the natural environment contained within

the NPPF, Policies CC6 and BE1 of the South East Plan and Policies C7, C8, C9, C13, C14 and C17 of the adopted Cherwell Local Plan.

## 5.6. TREES

5.6.1 Whilst most of the site is made up of open areas of unmanaged scrub land a number of trees are present on the site and adjacent to the site boundary and therefore there is potential for them to be affected by the development. The existing trees are located along the district boundary, along the western edge of the site, along the dismantled railway line and arranged in small clusters on the former filling factory site and in a woodland adjacent to the dismantled railway and the South Northamptonshire boundary.

5.6.2 The species most widely represented on the site include oak, hawthorn, crack willow and ash, together with a number of other typical species in keeping with the former agricultural use of the land. The arboricultural report submitted with the application does not identify any of the trees as being of high quality or value. 20% are considered to be of moderate value, 67% are of low quality and value and the remainder are identified as being suitable for removal for sound arboricultural management.

5.6.3 Officers' visits to the site revealed that every mature oak tree within the footprint of the proposed buildings had been recently felled, which as advised by the Council's arboricultural officer, appeared to be around three months before the application was submitted.

5.6.4 The loss of these trees is clearly extremely regrettable and not an approach that is supported by officers in the interest of conserving and enhancing the natural environment, however it must be recognised that none of the trees were protected trees and the arboricultural report did not identify any of the trees on the site as being of high quality or value. As such it could not be concluded that the loss of these trees represents significant harm and therefore it is likely that Officers would have accepted the removal of the trees in any event. The NPPF seeks compensation for the loss of biodiversity and as such it is recommended that an appropriate number of semi-mature oak trees are secured via condition as part of the landscaping scheme. The Council's arboriculturalist has placed an emergency TPO on the rest of the trees on the CDC section of the site so that the Council is in a position to have control over the further felling of trees.

5.6.5 Noting that the trees were not protected and could have been felled at any point in time and with the mitigation measures in place, Officers consider that the proposed development conserves and enhances the natural environment in accordance with government guidance contained within the NPPF and Policies C4 of the South East Plan 2009 and Policies C1 and C7 of the adopted Cherwell Local Plan 1996.

## 5.7 RIGHTS OF WAY

5.7.1 The proposals involve diverting the existing public footpaths on the site as referred to previously. Rather than taking a diagonal route across the existing field, the path would be diverted along the new road into the site and then around the end (southern most) unit before returning north immediately adjacent to the motorway.

- 5.7.2 The amenity of the western parts of the footpath would change quite significantly from the existing field to a formal, urbanised layout amongst the proposed buildings and adjacent to the vehicular access into the site which is somewhat unfortunate. The amenity of the western parts of the footpath is already affected by noise emanating from the motorway. On this side, the proposed landscaping scheme could assist with improving the visual amenities of the footpath.
- 5.7.3 The District Council's Countryside and Communities Manager believes that the diversion could be justified given the nature of the development and to avoid conflict between pedestrians and HGVs however there is insufficient detail to assess the suitability of the proposals at this stage. The diversion is complicated by the fact that it would cross the border into South Northamptonshire's District however this is resolvable.
- 5.7.4 The County Council's Rights of Way Officer states that the proposal should mitigate against any impact of the proposal upon the current footpath and supports measures to provide links with the open countryside. For this reason, whilst it is considered that the proposals for the footpath diversion are reasonable (the cost of providing which would be covered by the developer), the Rights of Way Officer considers that an additional £50,000 is required to formalise a link from the south east corner of the site onto the former railway line which would provide a publicly accessible route for workers and residents in the area.
- 5.7.5 In exploring this request further with Oxfordshire County Council, it would seem that the £50,000 has been requested to fund the adoption of a potential new right of way along the former railway embankment linking the site to parts of Grimsbury. However, officers consider that such a project could not be considered to be directly related to the development or necessary to make the development acceptable in planning terms (as required by the NPPF) particularly as, at this stage, the route only appears to be an aspiration and would not significantly reduce the existing walking distances to the site from the town centre. As such Officers could not reasonably insist that this money is secured by agreement. The developer has agreed to safeguard a link from the site to the former railway line should a new public footpath be adopted in the future, which Officers believe to be a more reasonable approach which is directly related to the development and fairly and reasonable related in scale and kind to the development (In accordance with the NPPF).
- 5.7.6 Given the above assessment Officers consider that safeguarding a link to the former railway line would assist with providing future opportunities for improving the public right of way network and therefore compensating for any loss of amenity to the existing footpath. As such the proposal would not cause overall harm to the amenity of the public footpaths which is in accordance with Government guidance on promoting healthy communities contained within the NPPF and Policy ESD18 of the Draft Cherwell Local Plan.
- 5.7.8 It should be noted that if the application is approved, the affected public rights of way would need to be diverted, the process for which could lead to an inquiry if an objection to the diversion is received. If the new route is not approved, this would mean that the developer would need to give consideration to an alternative layout to that indicatively shown.

## 5.8 FLOOD RISK AND DRAINAGE

- 5.8.1 Parts of the site lie within Flood Zones 2 and 3 and a Flood Risk Assessment has been submitted with the application. The Environment Agency raises no objections to the application stating that, as proposed, the development will not increase flood risk. This view is subject to a number of conditions relating to carrying out the development in accordance with the FRA, surface water drainage design, fluvial flood storage design and the management of flow in the western ditch.
- 5.8.2 Oxfordshire County Council as Drainage Authority raises no objections subject to conditions relating to SUDS, and full drainage details.
- 5.8.3 Subject to the recommended conditions, Officers are satisfied that the proposal accords with Government advice on meeting the challenge of flooding contained in the NPPF, Policy NRM4 of the South East Plan and Policies ESD6 and ESD7 of the Draft Cherwell Local Plan 2012.

## 5.9 LAND CONTAMINATION

- 5.9.1 Ground condition reports have been submitted with the application. The Council's Environmental Protection Officer has assessed these and raises no objections to the application however further investigative work is required prior to the commencement of the development relating to gas monitoring and risk assessment, risk from land contamination and the remedial measures required in relation to any findings. Prior to the occupation of the development all remediation is to be carried out in accordance with that identified as required.
- 5.9.2 Subject to the recommended contaminated land conditions, Officers are satisfied that the proposal accords with Government advice on conserving and enhancing the natural environment contained within the NPPF and Policy ENV12 of the adopted Cherwell Local Plan 1996.

## 5.10 AIR QUALITY

- 5.10.1 Policy NRM9 of the South East Plan states that proposals should contribute to sustaining the current downward trend in air pollution in the region. The Council's Environmental Protection Officer believes that the proposal has the potential to affect the Air Quality Management Area (AQMA) on Hennef Way which was designated in this first quarter of 2011 and the significance of the expected impact requires assessment.
- 5.10.2 An Air Quality Assessment was submitted with the application which concluded that there would be a slight increase in the levels of nitrogen dioxide as a result of the proposed development, and that no new exceedences of the air quality objectives would result from this development outside of the AQMA. As the pollutants of concern within the AQMA are transport related, the objectives within the travel plan aimed at sustainable travel and reduced dependency on car use are likely to also mitigate the impacts on air quality.
- 5.10.3 For these reasons, Officers are satisfied that the proposed development is unlikely to cause significant harm to air quality or be unacceptably detrimental to the identified AQMA on Hennef Way in accordance with Government advice on

conserving and enhancing the natural environment contained within the NPPF and Policy NRM9 of the South East Plan.

## 5.11 NOISE

- 5.11.1 The Council's Anti-Social Behaviour Manager has been in discussions with the developer about the likely noise levels emanating from the site. As the nature and mix of the proposed B2 and B8 uses is not known at this time it has been agreed that the extent of the noise specialists report would be to bench mark the existing noise climate at the closest noise sensitive locations and to use these bench marked background sound pressure levels to condition the application such that noise complaints were unlikely from residents in these locations. The appropriate noise levels are to be achieved by design at the detailed planning stage. A suitable condition is recommended below and subject to this wording, the application is acceptable to officers in terms of noise generation in accordance with Government advice on conserving and enhancing the natural environment contained within the NPPF, Policy NRM8 of the South East Plan and Policy ENV1 of the adopted Cherwell Local Plan 1996.

## 5.12 ARCHAEOLOGY

- 5.12.1 An archaeological field evaluation was carried out in relation to the site in October 2008 which revealed no deposits of archaeological significance and as such it was concluded that the CDC part of the site has no archaeological potential. The County Archaeologist is satisfied with these conclusions and makes no further recommendations other than making the developer aware of their responsibility should further finds be discovered during the implementation of the development.

- 5.12.2 There is however significant archaeological interest in the South Northamptonshire section of the site. The two parts of the site within SNC to the north of the dismantled railway include remains and earthworks from part of a former national filling factory from World War 1. The majority of the remains of this site are located on the eastern side of the M40, however when the motorway was constructed it segregated the site leaving the western parts separated. Advice from English Heritage states that the remains at Banbury represent the last surviving Great War Lyddite filling factory in England.

- 5.12.3 In accordance with the NPPF, the remains should be considered as a non-designated heritage asset, guidance in relation to which states that:

'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset' and 'Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets'.

- 5.12.4 The applicant has submitted a heritage statement which concludes that the smaller part of the site on the west of the M40 (which it is claimed was an extension to the original site) has relatively low heritage value when compared with the remains on the eastern and larger part of the site. Furthermore the

earthworks relate to an era that is best preserved by the remains of the original filling factory on the eastern site where a more coherent factory layout is evident.

- 5.12.5 The report considers that the removal of the elements on the western site would not cause significant harm to the historic environment and will provide an opportunity to record the remains to gain a better understanding of the eastern and historically more significant part of the site.
- 5.12.6 Officers have been advised that an application has been made by a third party to English Heritage to protect all of the remains of the filling factory on both sides of the motorway as a scheduled ancient monument. This application is currently being considered although it is not yet known when a decision will be made. However this gives no increased weight to the significance or the protection of the remains and there is no stipulation that would require South Northamptonshire Council to wait for a decision to be made by English Heritage in relation to this matter prior to a decision being made.
- 5.12.7 In response to a consultation request from English Heritage, South Northamptonshire Council's Head of Strategic Policy and the Economy regards the site as significant and due to its nature states that it holds national significance as it 'contributes to the understanding of the munitions production in the Great War'.
- 5.12.8 He continues by stating however that the M40 has bisected the site resulting in the loss of part of the site; the remains on the east side of the M40 appear to be more intact than those to the west and this Council supports the proposed scheduling of those remains. Given the disturbed nature of the site by the M40 and its construction and the fact the site to the west is now detached from the main site this Council does not support the inclusion of this part of the site for proposed scheduling.
- 5.12.9 Cherwell District Council's duty in relation to the remains, given their location beyond the CDC boundary and their current status (non-designated) lies with reaching a balanced judgement over the effect of the application on the setting of the asset only.
- 5.12.10 Cherwell District Council's Head of Strategic Planning and the Economy considers that the remains have been compromised by the construction of the M40, effectively cutting off the connectivity and interpretation of the western site from the remainder of the former factory. The eastern site has a better connection between Units 1 and 2 (north and south of the site), and retains better surviving earthworks, particularly in the northern area. Recent ground clearance has also further eroded the importance of the western site by removing the few remaining above ground structures. For these reasons, it is considered that the area to the western side of the motorway is not of sufficient national importance to warrant scheduling.
- 5.12.11 Given this conclusion, it is Officer's opinion that the remains to the west of the M40 are of limited significance and as such the protection of their setting balanced against the benefits of the proposal would be difficult to justify.
- 5.12.12 Interestingly, the Ancient Monument and Archaeological Areas Act 1979 does not make any reference to the protection of the setting of a Scheduled Ancient

Monument. Therefore if English Heritage did decide to schedule the whole of the remains, Cherwell District Council would not have a duty, under the Act, to protect the setting of the remains.

- 5.12.13 Due to the location of the district boundary, the decision relating to the treatment of the archaeological remains, prior to any decision made by English Heritage, lies solely with South Northamptonshire Council. If it were considered by them that the remains should not be disturbed by the development this would have an impact upon the developer's intentions for the layout of the development as a whole. Equally if English Heritage decided to schedule all of the remains, this would have an impact upon the layout of the site. Depending upon these decisions and their timing, the application may need to be reheard by Members of the committee for their further consideration.
- 5.12.14 Advice to this Council's Members however is that the direct protection of the non-designated heritage asset is not the duty of Cherwell District Council as it is not situated within this district. Furthermore, and at this stage, it would not be reasonable to recommend refusal for the application based on the impact of the proposals upon the setting of remains that are a) segregated from the majority of the historical site as a whole, b) are non-designated and, c) based on specialist advice, are not considered to be of national importance.
- 5.12.15 In relation to Cherwell District Council's administrative area only, and given the fact that no deposits of archaeological significance were recorded on the CDC part of the site, Officers are content that there are no heritage assets present which should be conserved or enhanced or that would be unacceptably affected by the proposed development. The appropriate investigative work has been carried out in accordance with government guidance on conserving and enhancing the historic environment contained within the NPPF.
- 5.13 BIODIVERSITY/ECOLOGICAL
- 5.13.1 With regard to biodiversity, the NPPF states that 'LPAs should aim to conserve and enhance biodiversity' it also states that 'if significant harm resulting from a development cannot be avoided, adequately mitigated, or, as a last resort compensated for, then planning permission should be refused'.
- 5.13.2 The Council's Ecologist remarks that the ecological assessment does not cover the whole site and was carried out at a suboptimal time. It is also noted that three key trees on the site that had potential for bat habitat have now been removed. However they were recently surveyed as not supporting habitats or resting places for bats. As such it is concluded that the proposed development is unlikely to have an impact upon European Protected Species and for this reason, developing the site would not result in committing an offence under Regulation 41 of the Conservation Regulations 2010 and as such a licence from Natural England would not be required.
- 5.13.3 There is potential for reptiles on the site. Reptiles are not a European Protected Species and as such a licence from Natural England would not be required if they were found and the development affected them. However the developer must mitigate against any impact which is required via planning condition as set out by the Council's Ecologist. Further survey work is to be secured via planning condition to establish their presence or otherwise, and should significant harm be



considered likely as a result of the development, the Council's Ecologist advises that any impact could be mitigated and if necessary enhancements secured.

- 5.13.4 With regard to reptiles, in terms of the loss of the mature trees, it could be argued that their loss represents significant harm (although it must be recognised that they were not protected), and although this could have been avoided, this action can normally be mitigated by a comprehensive landscaping scheme and the planting of a number of mature oak trees across the site, both to be secured via condition and which would accord with the advice contained within the NPPF.
- 5.13.5 Officers do not support whatsoever the approach taken by the developer in relation to the trees and the subsequent opportunities for bat roosts and resting places. However it must be recognised that their actions are not unlawful in planning terms. Appropriate mitigation, enhancement and where necessary compensation can be secured and as such the application cannot be refused on the grounds of significant harm to biodiversity. For these reasons, the application complies with Government guidance on conserving and enhancing the natural environment contained within the NPPF, Policy NRM5 of the South East Plan 2009 and Policies C1, C2 and C4 of the adopted Cherwell Local Plan 1996

#### 5.14 CRIME PREVENTION

- 5.14.1 Thames Valley Police raises concerns about the fact that the site would be exposed on all sides due to the location of the diverted public footpath and for this reason, opportunities for crime would be created. A comprehensive scheme for securing the site is required which can be dealt with at the reserved matters stage.

#### 5.15 PUBLIC ART

- 5.15.1 The Council's Arts and Tourism Manager requires the developer to create a locally relevant piece of artwork on or near the site which is directly related to the development and which is based on the Public Art Policy and the Council's Draft Planning Obligations SPD. The requirement for public art is applied to any development exceeding 100sqm and is normally secured via s106 Agreement.
- 5.15.2 The developer has agreed to provide the art work on site and involve local artists in the design of each element. They are currently in discussions with the Council's Arts and Tourism Manager in order to establish the amount and type of artwork required in connection with the development. Initial ideas include enhancing the south facing elevation of the southern most building with a reference to Banbury and providing locally designed seating for amenity areas.
- 5.15.3 Subject to agreement with the Council's Arts and Tourism Manager, this approach accords with the Public Art Policy and Government advice on requiring good design contained within the NPPF, Policies CC6 and BE1 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan 1996.

#### 5.16 PLANNING OBLIGATION(S)

- 5.16.1 Based on the consultation responses to the proposed development and the above assessment, it is considered that any planning permission relating to the site must be the subject of agreements acceptable to both Cherwell District Council and

Oxfordshire County Council to secure on site public art, the safeguarding of the route for a future relief road across the site, or where this is not required as a result of the Banbury Master Plan work, a contribution towards sustainable transport infrastructure (amount to be negotiated under delegated authority), the safeguarding of a link between the site and the former railway line to enhance its future adoption as a public right of way and the monitoring of the Travel Plan.

- 5.16.2 A separate agreement is also required between the developer and Northamptonshire County Council, the content of which is still under negotiation, but is expected to relate to the provision/enhancement of a bus service, traffic calming in Overthorpe, the provision of a footpath link on Overthorpe Road and to secure appropriate highway signage and the monitoring of a Travel Plan.

## 5.17 CONCLUSION

- 5.17.1 Referring back to the content of the NPPF, whilst the proposal does not accord with the development plan (adopted Cherwell Local Plan 1996), the advice is that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The key material planning considerations are summarised below:
- 5.17.2 The proposed development for B2 and/or B8 uses is considered to be acceptable in principle when considered against planning policy and guidance as although a large extent of B8 would not normally be acceptable, there is evidence through the Employment Land Review that there is a demand for B8 uses and that the employment density achieved by B8 uses is higher than it has historically been. Furthermore, the proposal would secure a considerable number of jobs for Banbury which would assist with complementing the current employment sector which is considered to be particularly important in the current economic climate.
- 5.17.3 With regard to transport impact the Highways Agency and Oxfordshire County Council as Local Highway Authority is satisfied that the proposal would not give rise to unacceptable transport impacts subject to a condition which restricts the B2 use of the site to no more than 50% and either the safe guarding of a route for a relief road where this is required or securing a financial contribution to sustainable highway infrastructure. Officers agree with this approach.
- 5.17.4 The proposal raises significant concerns about scale and design which are reserved matters in this instance, however the Design and Access Statement documents the likely scale and appearance in detail. As layout and appearance are reserved matters, and given the fact that the development of the land for employment generating development is, as referred to above, considered to be acceptable, officers are satisfied at this stage that the proposal is acceptable subject to the specific detailing of the buildings and a condition restricting their height to 16m.
- 5.17.5 Given the preceding assessment of the proposal, officers are satisfied that the proposed development represents sustainable development and would not give rise to adverse impacts (relating to transport/the highway network, the landscape (subject to detailing), flood risk, land contamination, biodiversity/ecology or archaeology) that would significantly and demonstrably outweigh the benefits of the proposal which are identified as significant sustainable economic development.

- 5.17.6 For the above reasons, the application accords with the principles set out in National Planning Policy Framework 2012, and relevant policies within the South East Plan 2009 and the adopted Cherwell Local Plan 1996.
- 5.17.7 The wording of the recommended conditions is subject to discussions between CDC and SNC officers and the applicant, as such officers seek delegated authority to finalise the wording of the conditions after the committee meeting.
- 5.17.8 Due to the fact that the site is not allocated in the adopted Cherwell Local Plan however, the proposal must follow departure procedures.

## 6. Recommendation

**Approval**, subject to:

- (i) Applicant entering into an Agreement acceptable to Cherwell District Council, and Oxfordshire County Council to secure public art, the safeguarding of a route for a relief road across the site, or where this is not required as a result of the Banbury Master Plan work, a contribution towards sustainable transport infrastructure (amount to be negotiated under delegated authority), the safeguarding of a link from the site to the former railway line and a contribution towards the monitoring of the travel plan.
- (ii) South Northamptonshire District's further resolution in relation to the same application (to be presented to Committee Members at SNC on 14 June 2012).
- (iii) Departure procedures;
- (iv) Conditions which cover the following matters (full list to be provided prior to the meeting)
  1. Submission of reserved matters
  2. Expiry of submission of reserved matters
  3. Expiry of reserved matters
  4. Protection of existing public footpaths during construction
  5. Tree protection
  6. Land contamination investigation
  7. Provision of access road to each building
  8. Archaeological investigation
  9. Landscape master plan
  10. SUDS
  11. Landscape management
  12. Further ecological survey work and biodiversity enhancement where necessary
  13. Construction traffic management
  14. Provision of diverted footpath
  15. Replacement trees
  16. Plans condition
  17. BREEAM 'Very Good'
  18. Lighting Strategy
  19. NO more than 50% B2 use
  20. COU does not relate to land to the south of the former railway line
  21. Building Height no more than 16m

### Planning Notes:

Thames Water letter (via public access)  
Secure by Design

SNHs Key Principles  
Ecology

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

The Council, as local planning authority, has determined this application with primary regard to the development plan and other material considerations. Although a departure from the development plan, the application is considered to be acceptable on its planning merits as the proposal represents sustainable development and would introduce increased employment opportunities in an accessible location without giving rise to any unacceptable transport or landscape impact. Furthermore the proposal is considered to be acceptable in terms of flood risk, land contamination, biodiversity, archaeology and the affected Public Right of Way. As such, the proposal is in accordance with government advice on achieving sustainable development, building a strong competitive economy, requiring good design, promoting health communities, conserving and enhancing the natural and historic environments, promoting sustainable transport and meeting the challenge of climate change and flooding contained within the National Planning Policy Framework 2012, Policies SP3, CC1, CC6, RE3, T1, T4, BE1, BE6, NRM4, NRM5 and NRM9 of the South East Plan 2009, Policies TR1, C1, C2, C4, C7, C8, C13, C17, C28, ENV1 and ENV12 of the adopted Cherwell Local Plan 1996 and Policy Banbury 6 of the draft Cherwell Local Plan 2012. 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, and a legal agreement to secure the essential infrastructure requirements.

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