

**Banbury Gateway
Acorn Way
Banbury
OX16 3JU**

13/01948/F

Ward: Banbury Grimsbury & Castle

District Councillor: Cllr. Andrew Beere, Cllr. Ann Bonner and Cllr. Margaret Cullip.

Case Officer: Robert Duxbury

Recommendation: Approve

Applicant: LXB RP (Banbury) & Prodrive

Application Description: Variation of condition 34 and 39 of 13/00227/F(as amended by letter received from agent dated 13.3.14)

Committee Referral: Major application.

1. Site Description and Proposed Development

- 1.1 The site is situated on the northern side of the Wildmere Industrial Estate on the very northern edge of Banbury. It is bounded by the River Cherwell to the north and north west, the M40 to the east, Wildmere Road to the south and neighbouring industrial buildings to the south west. The site largely consists of Prodrive's existing buildings and operations however there is an undeveloped area of grassed land to the north and an area of separate triangular shaped grazing land situated between the M40 and the former route of the Daventry road which runs through the site to the east of the existing buildings, and along which a right of way still remains. These two undeveloped areas together with the area occupied by Prodrive's buildings form the site for the proposed retail units. A lake and amenity area exist in the north western part of the site which would remain unchanged.
- 1.2 The site has been the subject of a previous application (11/01870/F) for the demolition of existing buildings and the construction of new retail units (Use Class A1), restaurants and cafes (Use Class A3), associated access, servicing and landscape works providing 26,503sqm of floorspace. Members resolved to grant permission for the development and the application was referred to the National Planning Casework Unit who confirmed that the Secretary of State did not wish to call the application in and that the matter could be dealt with at a local level. Planning permission was subsequently granted in December 2012. That permission was the subject of a Judicial Review challenge which was unsuccessful, but that decisions has been further challenged as is now awaiting consideration by the Court of Appeal
- 1.3 Subsequently that application was the subject of an application (13/00227/F) which sought to vary condition 34 of permission 11/01870/F which restricted the development to be constructed in accordance with approved plans. The applicant wished to amend units 1 and 2 approved under the 2011 application. That application was considered by this Committee in May and October 2013 and approved.
- 1.4 This application as originally submitted sought to further vary the original permission following detailed discussions with prospective occupiers. The most notable change was to be for the amalgamation of 3 units to create a single unit of 5,576 sq. metres to accommodate Primark. In summary the proposed amendments were
 - The amalgamation of units 6,7 and 8 to create unit to be occupied by Primark
 - The reduction in A3 use units from 3 to 2 under feature canopy in western

corner of the site

- Minor revisions in the ground floor footprint of units 9 and 10 to accommodate tenant requirements
- Redistribution of floorspace to create new unit adjacent to Unit 14, totalling 559 sq. metres
- A reduction in car parking numbers from 623 to 591 spaces
- An overall increase in the total permitted floorspace from 26,507 sq. metres to 27,286 sq. metres from the changes above, i.e. an overall increase of 779 sq. metres

1.5 The application has however been further amended by the applicants letter dated 13 March 2014 which is attached as annexe 1 together with the revised floorspace schedules that are now proposed.

1.6 This application was deferred at the last meeting to await Counsel's opinion on representations that had been made. These have now been received. The applicants have indicated their concern if this application had to wait until 3rd April to be considered as they have a number of contractual positions which lapse on 31st March, and the delay could undermine the ability to proceed with the proposal. It is considered that it is in the interests of economic development of the District to ensure that this application is considered as soon as possible, and in advance of 31 March as requested.

2. Application Publicity

2.1 The application has been advertised by way of a site notice, and advert in the press and neighbour letters. The final date for comment was the 31st January 2014. A limited reconsultation exercise has been undertaken with regards to the amended floorspace matters. Any further representations received as a result of that will be reported verbally

2.2 In response to the original application representations were received from solicitors and planning consultants acting for the owners of the Castle Quay development . These representations are reproduced in full as Annexes 2 and 3.

3. Consultations

3.1 **Banbury Town Council** - Wish to raise no objections

3.2 **Bourtons Parish Council** Raise no objections to the scheme, but comment that they fear for the future viability of the town centre shops with more dilution of the trade to an out of centre retail park. They think the Council need to enhance and revitalise the town centre

Oxfordshire County Council Consultees

3.3 **OCC Highways** – No objection
Their comments are attached as annexe 4 to the rear of the report.

Other consultees

3.4 **Thames Water** Wish to make no comments

3.5 **South Northamptonshire Council** No comments yet received

3.6 **CBRE.** The Council has instructed planning consultant to provide specialist retail planning advice. Their reports are attached as Annexe 5.

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

National Planning Policy Framework
National Planning Practice Guidance

4.1 **Adopted Cherwell Local Plan 1996 (Saved Policies)**

Policy EMP1 Allocation of Sites for Employment Generating Development
Policy S10 Development in Banbury commercial areas
Policy TR1 Transportation Funding
Policy TR14 Formation of New Accesses to the inner relief road and Hennef Way
Policy R7 Protection and enhancement of the recreational roles of the Oxford Canal and River Cherwell
Policy C1 Protection of sites of nature conservation value
Policy C2 Development affecting 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 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

4.2 **Cherwell Local Plan (submitted Jan 2014)**

Policy PSD 1 Presumption in favour of sustainable development
Policy SLE 1 Employment development
Policy SLE 2 Securing dynamic town centres

5. **Appraisal**

5.1 Members may recall application 11/01870/F that was presented to committee originally on 22nd March 2012. The application was re-presented to committee on 24th May 2012 following the publication of the National Planning Policy Framework to enable reconsideration of resolutions in light of the advice contained therein. Members agreed to grant permission for the development.

5.2 The proposal involved demolishing all of the existing buildings on the site and redeveloping it to create a retail park consisting of 10 retail units and three restaurant/café units. The development would have a total floor area of 26,503sqm and would include an anchor store (unit 11) with a ground floor area of 4,647sqm and a secondary store with garden centre (unit 2) with a ground floor area of 2,790qm. The remainder of the retail units would have ground floor areas ranging from 465sqm to 929sqm. All retail units would have a mezzanine floor. The three smaller A3 units (units 3-5) would have ground floor areas ranging from 164sqm to 326sqm. The anchor store together with eight of the proposed units would be arranged on the north west side of the site, the anchor being closest to the motorway; the smaller units running towards Acorn Way. Two units (units 1 and 2) would back onto Wildmere Road and two further units (units 12 and 13) would be positioned in the south east corner of the site. All parking and manoeuvring areas would be positioned centrally amongst the buildings and include pedestrian walkways. The proposal would result in realigning the public right of way away from the former route of Daventry Road to the

front of units 12 and 13 and then running parallel with the Motorway. The area of the A3 uses would include a covered walkway and seating area. New planting is proposed across the whole site. Servicing areas for deliveries would be situated to the south of units 1 and 2, fronting Wildmere Road, to the north of units 9 and 10 between the buildings and the amenity area and to the west of units 12 and 13.

- 5.3 The subsequent proposal (13/00227/F) sought to subdivide units 1 and 2 to create 3 retail units at the south terrace area sited on Wildmere Road. The units were renumbered so that they run west to east as unit 14, unit 1 and then unit 2, with Next proposed to occupy unit 2. The floorspace within unit 2 would be reduced in size from 30,000 sq. ft. (2787 sq. m) to 20,000 sq. ft. (1858 sq. m) to allow the creation of the third unit.
- 5.4 The garden centre to the west of the units was removed from the scheme and replaced with car parking. The service area was reduced and the sprinkler tank/pump room omitted.
- 5.5 Conditions 34 and 39 of the new overall permission (13/00227/F) limit the scheme to the approved plans (No.34) and seek to prevent amalgamation (No.39) by saying that "the A1 units shall not be amalgamated to provide more than two A1 retail units exceeding 1,800 sq. metres (gross internal area at ground floor). As described above in Section 1 the principal thrust of this application is to facilitate a further large floorplate retailer being located in this out of town centre location.
- 5.6 It will be seen in the representations received (Annexe 3) that the Council was being challenged as to the procedure (Section 73) that was being used by the applicant to vary the permission. Your officers sought Counsel's advice on this matter and the advice received was that it may have been possible to challenge the applicability of the use of Section 73 given the scale of the additional floorspace for which permission was sought. As a result the applicant has amended the application to omit this element of the proposal.
- 5.7 A principal issue in the determination of this application needs to be an assessment of the increased impact that the changes to the authorised scheme would have upon the vitality and viability of the town centre. In the light of the importance of this issue the HDM has instructed an independent assessment of the submitted documentation as referred to in 3.6 above. At Annexe 5 we reproduce the advice received. It will have been noted that Turleys writing on behalf of the owners of Castle Quay consider that you have insufficient information upon which to base a decision, that the sequential assessment is incomplete and that the proposal will have a direct impact upon the town centre in reducing the the number of anchor tenants in the town centre and thereby the main drivers of footfall. They think this in turn will lead to degradation in the vitality and viability of the town centre.
- 5.8 The NPPF continues to champion the Government's main aim of promoting the well-being of town centres. Local Planning Authorities should still apply the sequential test to any planning application for main town centre uses that are proposed that are not in an existing centre and are not in accordance with an up to date local plan. This site is out of centre and therefore the applicants have undertaken a sequential assessment to seek to identify if there are any town centre or edge of centre sites that are capable of accommodating this proposed development. The applicants' sequential assessment deals in detail with Banbury Canalside, Bolton Road, and the Spiceball area. It concludes that these sites are neither available, suitable nor viable in all cases. The CBRE reports support the view that none of these sites are sequentially preferable

5.9 In addition Para 26 of the NPPF requires the submission of an impact assessment for schemes of over 2,500 sq. metres of retail floorspace. This application no longer proposes an increase in floorspace of 779 sq.m. A full impact assessment has not been submitted, although the Planning Statement does review the potential impacts and assesses the current health of Banbury town centre. This applicants assessment concludes that the proposed development will not prejudice any forthcoming town centre investment, nor does it have a significant adverse impact on any of the centres within the catchment area. In paragraph 22 of the CBRE document dated 5 March they note that in their opinion the larger unit will not have a significant adverse impact on investment in the either Canalside, Bolton Road or the Spiceball sites

5.10 Our advisers, CBRE, consider the impact upon the vitality and viability of the town centre in paragraphs 25-33 of their 5 March document (Annexe 5).Atr the end of those comments they say that

“ Whilst, therefore, we think that the appeal of Banbury Gateway would increase as a result of the proposed Primark store and that some adverse impact on vitality and viability of the centre is likely, we are content that the impact is unlikely to be significant”

5.10 Given the fact that the proposed development is in conflict with the land use allocations set out in the adopted Cherwell Local Plan it is considered to be a departure from the development plan. Furthermore as the application proposes retail development in an out of town centre location, the Council is directed to consult the Secretary of State in the event that members resolve to approve the application. For both reasons, should Members resolve to approve the application it would be sent to the Secretary of State who would decide whether to make the ultimate decision in relation to the application or to allow the Local Authority to do so.

Impact on parking and highway safety

5.11 Oxfordshire County Council Highway Authority raises no objection to the application on the grounds of highway safety as sufficient parking to serve the development would be retained on site.

Conditions

5.12 Legal Services have advised that if Members agree to grant planning permission for the amendments, all the conditions from the previous application must be transferred to this application as a new full application for the development of the site would be issued.

Engagement

5.13 With regard to the duty set out in paragraphs 186 and 187 of the Framework, no problems or issues have arisen during the application. It is considered that the duty to be positive and proactive has been discharged through the efficient and timely determination of the application.

6. Recommendation

Approval, subject to:

i) referral to the Secretary of State (Department for Communities and Local

Government) as a departure (out of town as defined with CLG Circular 02/2009);

- ii) completion of a satisfactory amendment to the existing section 106 agreement relating to matters of public art CCTV, transport infrastructure and highways.
- iii) the following conditions:

CONDITIONS TO BE DISCHARGED PRIOR TO COMMENCEMENT OF THE DEVELOPMENT AND ANY DEMOLITION

1. Land Contamination (investigation)

Prior to the commencement of the development hereby permitted and any demolition on the site, comprehensive intrusive investigation in order to characterise the type, nature and extent of the potential risk from contamination present (identified in Campbell Reith Consulting Engineers Geoenvironmental and Geotechnical Desktop Study, dated December 2011 submitted with application 11/01870/F), the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

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

2. Land Contamination (remediation scheme)

Prior to the commencement of the development hereby permitted and any demolition on the site, if contamination is found by undertaking the work carried out under condition 1, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

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

3. Archaeology (preparation of WSI)

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

Reason - To safeguard the recording and inspection of matters of archaeological importance on the site in accordance with Government guidance contained within the National Planning Policy Framework.

4. Archaeology (evaluation and mitigation)

Prior to the commencement of the development and any demolition on the site, and following the approval of the Written Scheme of Investigation referred to in condition 3, a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of archaeological evaluation and mitigation shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority as soon as practically possible following the completion of the on site investigation. Providing that the timing of the archaeological evaluation and mitigation is carried out in accordance with the wording of this condition, the submission of the full report may follow the commencement of the development on site.

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 guidance contained within the National Planning Policy Framework.

5. Ecological Protection

Prior to the commencement of the development and any demolition on the site, measures to protect the ecological value of the River Cherwell and the existing pond on the site from the development works shall be installed on site in accordance with full details to be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter the approved protection measures shall remain in place until the completion of the development hereby approved.

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

6. Tree Protection

Prior to the commencement of the development and any demolition on the site, the trees on the site identified as being retained on the approved plans, shall be protected in accordance with the measures set out in the submitted arboricultural statement prepared by Ecourban Ltd (Ref: 11234-AIA) submitted with application 11/01870/F. The tree protection measures shall remain in place on the site until the completion of the development hereby approved.

Reason - To ensure the continued health of the retained trees and 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 C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

CONDITIONS TO BE DISCHARGED PRIOR TO THE COMMENCEMENT OF THE DEVELOPMENT

7. Materials (schedule/sample)

Prior to the commencement of the development, a schedule of materials and finishes which shall include the submission of samples of walling and roofing materials, 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 C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

8. Landscaping Details

Prior to the commencement of the development hereby approved, a scheme for landscaping the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include:

- a) Details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas.
- b) Detail of tree planting including planting pit dimensions and surfacing treatment.
- c) Details of the existing trees and hedgerows to be retained together with those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest hedge of any excavation.
- d) Details of the hard surface areas, pavements, pedestrian areas, crossing points and steps.

Reason - in the interests of the visual amenities of the area, to ensure the creations of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

9. Refuse/Storage Details

Prior to the commencement of the development hereby approved, full details of all refuse and storage areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the refuse and storage areas shall be constructed in accordance with approved details prior to the first occupation of any of the units hereby approved.

Reason - To ensure that proper arrangements are made for the disposal of waste, together with ensuring the creation of a satisfactory environment free from intrusive levels of odour//flies//vermin//litter and to ensure the satisfactory appearance of the completed development in accordance with Policies ENV1

and C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

10. Lighting Details

Prior to the commencement of the development hereby approved, full details of all external lighting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the lighting shall be installed and retained in accordance with the approved details.

Reason - To ensure the satisfactory appearance of the completed development and to protect habitats of importance to nature conservation from any loss or damage in accordance with Policies C2 and C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

11. Enclosure Details

Prior to the commencement of the development hereby approved, 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. Thereafter such means of enclosure shall be erected and retained on site in accordance with the approved details prior to the first occupation of the development hereby approved.

Reason - To ensure the satisfactory appearance of the completed development in accordance with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

12. New Footpath Details

Prior to the commencement of the development hereby approved, full details of the on site pedestrian and cycle route improvements shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the improved routes, shall be formed, laid out and constructed strictly in accordance with the Local Highway Authority's specifications and all ancillary works specified therein shall be undertaken prior to the first occupation of the development hereby approved.

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

13. SUDS

Prior to the commencement of the development hereby approved, a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the scheme shall be implemented in accordance with the approved details prior to the first occupation of the development hereby approved.

Reason - To ensure satisfactory drainage of the site in the interests of public health, to avoid flooding of adjacent land and property and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

14. Surface Water/Foul Drainage

Prior to the commencement of the development hereby approved, a detailed scheme for the surface water and foul drainage of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to the first occupation of any building works to which the scheme relates the approved foul sewerage 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 current British Standards and Building Regulations.

Reason - To ensure satisfactory drainage of the site in the interests of public health, to avoid flooding of adjacent land and property and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

15. Temporary Cyclist/Pedestrian Route

Prior to the commencement of the development hereby approved, a temporary replacement route for the existing public footpath/cycleway which crosses the site shall be provided, constructed and surfaced in accordance with full details to be submitted to and approved in writing by the Local Planning Authority. Thereafter the temporary replacement route shall remain open throughout the entire construction phase, until such time that the permanent public right of way diversion has been brought into force and its route constructed, surfaced and opened.

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

16. Air Quality Assessment

Prior to commencement of the development hereby permitted, an Air Quality Assessment shall be undertaken by a competent person and shall be submitted to and approved in writing by the Local Planning Authority.

Reason - To protect residents within the air quality management area from significantly increased exposure to air pollutants which exceed the National Air Quality Objectives in accordance with Government guidance contained within the National Planning Policy Framework.

17. Air Quality Mitigation

Prior to the commencement of the development hereby approved and where required as a result of the Air Quality Assessment approved under condition 16, a scheme for the protection of residents within the nearby Air Quality Management Area shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the measures of the protection scheme shall be implemented prior to the first occupation of the development hereby approved.

Reason - To protect residents within the air quality management area from significantly increased exposure to air pollutants which exceed the National Air Quality Objectives in accordance with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

18. Construction Traffic Management

Prior to the commencement of the development hereby approved, a Construction Traffic Management Plan providing full details of the phasing of the development shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include wheel washing facilities, a restriction on construction and delivery traffic during the construction works and a route to the development site. The approved Plan shall be implemented in full in accordance with the approved details during the entire construction phase.

Reason - In the interests of highway safety and to mitigate against the impact of the development during the construction phase and to protect the amenities of Banbury during the construction period and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

19. Advertising Strategy

Prior to the commencement of the development full details of a strategy for signage and advertising for the entire development shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the signage for each unit shall be submitted for approval in accordance with the approved strategy.

Reason - To ensure the satisfactory appearance of the completed development in accordance with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

20. Demolition

Prior to the commencement of the development, the buildings and structures on the site at the date of this permission shall be demolished and the debris and materials removed from the site unless they are to be recycled and used as part of the construction phase.

Reason - in order to achieve a satisfactory form of development, to ensure that the site is not overdeveloped and comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

21. Land Contamination (carrying out remediation)

Prior to the first occupation of the development hereby approved and if remedial works have been identified in condition 2, the remedial works shall be carried out in accordance with the scheme approved under condition 2 and a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

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

22. Waste Bin Details

Prior to the first occupation of the development hereby approved, suitably located waste bins within the external pedestrian circulation areas for use by the public shall be installed and thereafter retained in accordance with full design details to be firstly submitted to and approved in writing by the Local Planning Authority.

Reason - To ensure that proper arrangements are made for the disposal of waste, together with ensuring the creation of a satisfactory environment free from intrusive levels of odour/flies/vermin//litter and to ensure the satisfactory appearance of the completed development in accordance Policies ENV1 and C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

23. Access Works

Prior to the first occupation of the development hereby approved the proposed access works between the land and the highway as indicated on drawings numbered 110071_SK_23 and 110071-A-01 submitted with application 11/01870/F shall be formed, laid out and constructed strictly in accordance with the Local Highway Authority's specifications and that all ancillary works specified therein shall be undertaken.

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

24. Off Site Highway Works

Prior to the first occupation of the development hereby approved the proposed off-site works between the land and the highway as indicated on drawing numbered 110071-A-03 submitted with application 11/01870/F shall be formed, laid out and constructed strictly in accordance with the Local Highway Authority's specifications and that all ancillary works specified therein shall be undertaken.

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

25. Vision Splays

Prior to the first occupation of the development hereby approved, full details of the vision splays within the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the vision splays shall be formed, laid out and constructed in accordance with the approved details and the land and vegetation within each vision splay shall not be raised or allowed to grow above a maximum height of 0.9metres above carriageway level.

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

26. Parking Areas

Prior to the first occupation of the development hereby approved, the parking areas, which shall include 580 car parking spaces, shall be constructed, surfaced, laid and marked out, drained and completed in accordance with specification details to be firstly 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 and layout for the development and to comply with Government guidance contained within the National Planning Policy Framework.

27. Cycle Parking

Prior to the first occupation of the development hereby approved, covered cycle parking facilities, which shall include 146 cycle parking spaces (73 Sheffield stands) shall be provided on site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. Thereafter, the covered cycle parking facilities so provided shall be permanently retained and maintained for the parking of cycles in connection with the 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.

28. Provision of routes for replacement public rights of way

Prior to the first occupation of the development hereby approved, the routes for replacement public rights of way shall be formed, laid out, constructed and made fully open for public use in accordance with full details (to include all ancillary works) to be firstly 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 and layout for the development and to comply with Government guidance contained within the National Planning Policy Framework.

29. Car Parking Management Plan

Prior to the first occupation of the development hereby approved a car parking management plan which shall include details of overall management, hours of operation, security and management at peak trading times, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the car parking on the site shall be managed in accordance with the approved details.

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

30. Shuttle Bus Advertising

Prior to the first occupation of the development hereby approved a scheme advertising the shuttle bus service to Banbury Town Centre shall be installed on the site in accordance with full details to be submitted to and approved in writing by the Local Planning Authority. Thereafter the advertising scheme shall be retained on site.

Reason - In order to safeguard the vitality and viability of Banbury Town Centre and to comply with Government advice contained within the National Planning Policy Framework.

31. Bird/Bat Boxes

Prior to the first occupation of the development hereby approved, bird nesting boxes (including boxes suitable for swifts) and bat boxes shall be installed on the buildings/site in accordance with full details to be first submitted to and approved in writing by the Local Planning Authority.

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

32. Wildflower Grassland

Prior to the occupation of the development hereby approved, full details of the creation and management of the wildflower grassland shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the wildflower grassland areas shall be planted in accordance with the approved details during the first planting season following the first occupation of the buildings hereby approved.

Reason - in order to secure biodiversity enhancements in accordance with the requirements of Policy C2 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

COMPLIANCE ONLY CONDIITONS

33. Time Limit

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.

34. Plans Condition

Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: application forms, design and access statement (rev B), flood risk assessment and addendum and drawings numbered 8842-P147-A; 8842-P144B;8842-P145B;8842-P146A;8842-E110A;8842-S108;8842-P141A;8842-142C;8842-P143B;8842-E109;8842-S107;8842-P130A;8842-P131;8842-E108;8842-S106;8842-P148;8842-P149;8842-P150

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.

35. Footpath Hedge Height

The new boundary planting to be provided along the diverted footpath/cycleway between the car park and the footpath shall be made up of plant species which grow no higher than 0.9m in height.

Reason - In the interests of highway safety, to ensure a satisfactory environment and to comply with Government guidance contained within the National Planning Policy Framework.

36. BREEAM

The development hereby approved shall be constructed to at least a BREEAM 'Very Good' standard under the appropriate BREEAM scheme as registered by the developer with the BRE.

Reason - to ensure energy and resource efficiency practices are incorporated into the development in accordance with Government guidance contained within the National Planning Policy Framework.

37. Carrying out of Landscaping Planting

All planting, seeding and turfing comprised in the approved details of landscaping, shall be carried out in the first planting and seeding seasons following the occupation of the buildings or on the completion of the development, whichever is the sooner; and that any trees and shrubs which within a periods 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.

Reason - in the interests of the visual amenities of the area, to ensure the creations of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

RESTRICTIVE CONDITIONS

38. Subdivision

The retail units hereby approved shall not be subdivided to provide any more than 15 A1 retail units on the site and no A1 retail unit shall be subdivided to less than 465 square meters in ground floor area.

Reason - In order to safeguard the vitality and viability of Banbury Town Centre and to comply with Government guidance contained within the National Planning Policy Framework.

39. Amalgamation

The A1 retail units hereby approved shall not be amalgamated with the A3 units indicated as Units 3, 4, and 5 on drawing numbered 8842-P-101E and the A1 retail units shall not be amalgamated to provide any more than TWO A1 retail units exceeding 1,800 sqm (GIA at ground floor level).

Reason - In order to safeguard the vitality and viability of Banbury Town Centre and to comply with Government guidance contained within the National Planning Policy Framework.

40. No Convenience Goods

Other than from unit 11 as indicated on drawing numbered 8842-P-101-E, no

more than 5% of the GIA of each A1 retail unit shall be used for the sale of convenience goods.

Reason - In order to safeguard the vitality and viability of Banbury Town Centre and to comply with Government guidance contained within the National Planning Policy Framework.

41. Convenience Goods Restriction Unit 11

No more than 15% of the total floorspace of Unit 11 (including floorspace at mezzanine level) shall be used for the sale of convenience goods.

Reason - In order to safeguard the vitality and viability of Banbury Town Centre and to comply with Government guidance contained within the National Planning Policy Framework

42. No COU

The A3 units hereby approved (Units 3, 4 and 5) shall be used only for the purposes falling within Class A3 specified in the Schedule to the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 together with the sale of ancillary A1 and A5 goods, and for no other purpose(s) whatsoever.

Reason - In order to safeguard the vitality and viability of Banbury Town Centre and to comply with Government guidance contained within the National Planning Policy Framework

43. No Extensions

Notwithstanding the provisions of Classes A and B of Part 42, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 and its subsequent amendments, the approved buildings shall not be extended or altered and nor shall any trolley stores, other than those indicated on the approved plans, be erected or constructed within the curtilage of each unit.

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the visual appearance of the development and the amenities of the area and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

44. No Outside Storage

Prior to the occupation of each building hereby approved all goods, materials or plant to be stored or displayed in the open shall be provided in association with each unit in accordance with full details to be submitted to and approved in writing by the Local Planning Authority and other than in accordance with the approved details no other goods, materials or plant shall be stored or displayed in the open

Reason - To enable the Local Planning Authority to retain planning control over the development of this site in order to safeguard the visual appearance of the development and the amenities of the area and to comply with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

PLANNING NOTES

1. No development shall take place across any public footpath/right of way unless and until it has been legally stopped up or diverted.
2. Attention is drawn to a Legal Agreement related to this development or land which has been made pursuant to Section 106 of the Town and Country Planning Act 1990, Sections 111 and 139 of the Local Government Act 1972 and/or other enabling powers.
3. Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved.
4. The applicant's and/or the developer's attention is drawn to the requirements of the Control of Pollution Act 1974, the Environmental Protection Act 1990 and the Clean Air Act 1993, which relate to the control of any nuisance arising from construction sites. The applicant/developer is encouraged to undertake the proposed building operations in such a manner as to avoid causing any undue nuisance or disturbance to neighbouring residents. Under Section 61 of the Control of Pollution Act 1974, contractors may apply to the Council for 'prior consent' to carry out works, which would establish hours of operation, noise levels and methods of working. Please contact the Council's Anti-Social Behaviour Manager on 01295 221623 for further advice on this matter.
5. Your attention is drawn to the need to have regard to the requirements of UK and European legislation relating to the protection of certain wild plants and animals. Approval under that legislation will be required and a licence may be necessary if protected species or habitats are affected by the development. If protected species are discovered you must be aware that to proceed with the development without seeking advice from Natural England could result in prosecution. For further information or to obtain approval contact Natural England on 0300 060 2501.

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 represents investment in Banbury which is considered to be economically important and is acceptable on its planning merits it would not result in an unacceptable loss of existing employment land, would protect the vitality and viability of Banbury Town Centre and would not result in an unacceptable transport impact or be a risk to highway safety. The development is considered to be acceptable in terms of its landscape impact, design and layout and its subsequent impact upon residential, visual and public amenity and would not result in causing harm to the existing public right of way which crosses the site, public safety, biodiversity, ecology, trees, air quality or archaeology. Furthermore the development would not be at risk from land contamination or significantly contribute to flood risk or climate change. As such the proposal is in accordance with Policies EMP1, S10, TR1, R7, C1, C2, C4, C7, C9, C17, C28, ENV1, ENV7 and ENV12 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 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.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way.