

Appendix 1

Land adjacent to Oxford Canal Spiceball Park Banbury

13/01601/OUT

Ward: Banbury Grimsbury and Castle

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

Case Officer: Bob Duxbury/Graham Wyatt

Recommendation: Approve

Applicant: Scottish Widows Group

Application Description: Outline planning permission for the redevelopment of land adjacent to the Oxford Canal comprising; the demolition of the Castle Quay Shopping Centre northern car park and the General Foods Sports and Social Club; change of use of part of the ground floor of the Castle Quay Shopping Centre southern car park and associated works; the erection of a retail food store (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road | Land Adjacent To The Oxford Canal Spiceball Park Road Banbury

Committee Referral: Major application

Committee Date: 9th January 2014

1. Site Description and Proposal

- 1.1 The application site extends to 4.69 hectares and includes the Castle Quay Shopping Centre northern car park and the frontage of the southern car park, General Food Sports and Social Club, and the site of the former Spiceball Sports and Leisure Centre (which was demolished in 2010). The river Cherwell forms the north-eastern boundary and the Oxford canal bisects the south-western part of the site. Following the redevelopment of the Spiceball site in 2010 a large part of the site is now given over to parking. The site is bounded to the east by Concorde Avenue (A4260) which links the town centre to A422 and the M40. To the north of the site linking to Concorde Avenue is Cherwell Drive which runs east/west to the north of the site as it then curves towards Castle Quay. A central spine road then runs into the site (Spiceball Park Road). The site and area is urban in character. The site lies close to the town centre with bridges over the canal connecting the site to Castle Quay and the surrounding town centre uses.
- 1.2 On the eastern side of the canal lies sheltered housing at Chamberlaine Court which sits between the Banbury Museum and The Mill Arts Centre. To the north of the river Cherwell lies the new Spiceball Leisure Centre. To the south and west of the canal is the Castle Quay shopping centre. The site lies close to the town centre and is identified as an edge of centre location within the adopted Cherwell Local Plan 1996 Proposals map. The site is also identified under Policy Banbury 9: Spiceball Development Area, of the Proposed Submission Local Plan as a site suitable to deliver retail and leisure uses and to strengthen the night time economy.

- 1.3 With regard to site constraints, Council records indicate that the site is located within Flood Zone 3 and part of the site (Oxford Canal) is designated a Conservation Area. Adjacent to the site is Tooley's Boatyard which is a Scheduled Ancient Monument and the Mill Arts Centre which is locally listed. Public footpath 120/103 runs along the tow path of the canal. Protected species (water voles) have been recorded at the river and the site is classified as an high area of archaeological interest. Given the previous uses, the land is also likely to be contaminated.
- 1.4 The application is submitted in outline form with only access for consideration. All other matters (appearance, landscaping, layout and scale) are reserved for future consideration. The planning statement and parameters plans indicate that the following development is proposed;
- Demolition of the Castle Quay Shopping Centre northern car park and the General Food Sports and Social Club;
 - Construction of a new food store on the site of the former Spiceball Leisure Centre;
 - Erection of a new 92 bed hotel to the south of the canal, involving the change of use of part of the ground floor of the southern Castle Quay Shopping Centre car park and associated works;
 - Erection of new restaurant/café units to the north of the canal;
 - Erection of a new cinema to the north of the canal;
 - New car parking;
 - New access arrangements;
 - Landscaping enhancements;
 - Glazed canopy over the Oxford canal;
 - Bridge over the Oxford canal; and
 - Bridge over the river Cherwell.
- 1.5 The proposed minimum and maximum floorspace of the development is indicated in the table below:

Use (Class)	Minimum Area (GIA) m²	Maximum Area (GIA) M²
Supermarket (A1)	3, 000	5, 550
Restaurants (A3)	2,300	5,800
Hotel (C1)	1, 350	6, 350
Cinema (D2)	2, 390	4, 800
Car Parking	465 Spaces	640 Spaces

- 1.6 The application is supported by an indicative master plan indicating the likely disposition of uses and a series of parameters plans indicating the maximum and minimum deviation in the layout and scale of the proposed development.

Parameters Plans

- 1.7 Submitted with the application is a series of parameter plans. These indicate the different types of development, heights, levels etc. proposed to be undertaken to develop site. The parameter plans are as follows:

- OP-00 Site Location
- OP-01 Site boundary
- OP-02 Demolition
- OP-03 Excavation

OP-04 Land use (Level 0)
OP-05 Land use (Level 1)
OP-06 Land use (Level 2)
OP-07 (Rev P1) Land use (Level 3-6)
OP-08 Areas schedule
OP-09 Deviations in plan level 0
OP-10 Rev P1 Deviations in plan level 1
OP-11 Rev P1 Deviations in plan level 2
OP-12 Rev P1 Deviations in plan level 3-6
OP-13 Canopies
OP-14 Rev P1 Deviations in height sheet 1
OP-15 Deviations in height sheet 2
OP-16 Bridges
OP-17 Active frontages
OP-18 Pedestrian site circulation
OP-19 Pedestrian access routes
OP-20 Landscape
OP-21 Vehicle access and circulation
SK/039 Hotel Section

- 1.8 The applicant states at paragraph 3.15 of the Planning Statement that the “Parameter Plans outline the parameters of the Proposed Development (e.g. land use, layout, form and scale and quanta) and form the determination ‘drawings’ for the application.” Therefore, the parameter plans can be the subject of a condition to ensure that the development is carried out in accordance with them.
- 1.9 As the final development has yet to be confirmed, there is a degree of deviation within the plans and heights. These are as indicated on drawings marked as “deviation” above. The application seeks a degree of flexibility and therefore a range of parameters are submitted for consideration which will consequently form the basis of consideration and the reserved matters stage. Matters of detail will also be considered at this stage, although the submitted Design and Access Statement (DAS) provides a clear statement of intent in respect of what will ultimately be delivered at the site.
- 1.10 An Environmental Impact Assessment (EIA) ‘Screening Request’ was submitted to Cherwell District Council on 5 August 2013 and updated 8th November 2013. Following consideration Cherwell District Council determined on 15th November 2013 that the proposed development did not constitute EIA development (application 13/00082/SO refers).

2. Application Publicity

- 2.1 The application has been advertised by way of a press notice, site notices and neighbour letters. The final date for comment on this application was 21st November 2013. At the time of writing this report the following comments have been received:
- A 58 page petition containing 1044 signatures from users of the General Foods Sports and Social Club was received requesting that the application be refused as they have the right to remain at the site which provides a quality venue for social and leisure activities.
 - 63 letters (all the same text) of objection have been received objecting to the loss of the General Foods Sports and Social Club.

- Members will have received an e-mail from solicitors acting for the GF Sports and Social Club. They say that

We are writing directly to you and in advance of the Planning Committee meeting tomorrow in connection with the above application (ref:13/01601/OUT – Outline Planning Permission for the redevelopment of land adjacent to the Oxford Canal comprising demolition of the Castle Quay Shopping Centre northern car park and the General Foods Sports and Social Club...etc). Given the following;

- the proposed application includes our client's site; and
- our client is a statutory consultee
- our client has formally objected to the proposed development through the consultation phase; and
- our client is registered to speak

Our client may not have an opportunity to speak at the Planning Committee meeting tomorrow given the restrictions placed by the council's constitution on the time available for objectors to speak (to share a 5 minute slot to speak at the meeting with 3 other objectors) Given this circumstance, we trust that Councillors will agree it is reasonable for our client to ensure that members of the Planning Committee observe and register our client's objections given that the proposal will affect the very existence of the club.

- 17 letters of objection (including the Thrupp Canal Cruising Club) raising the following issues:
 - Loss of sports and social club,
 - Noise and disturbance as a result of the leisure uses and additional traffic,
 - No need for additional uses;
 - Vacant units within existing Castle Quay;
 - Flood risk;
 - Lighting and security;
 - Impact on "Canal Day"
 - Anti-Social behaviour as a result of the canopy and uses;
 - Failure to integrate
 - Impact on canal (both new buildings and canopy) and;
 - Impact on character and appearance of the area.
- Chris Wardley, Chartered Engineer and Planning Officer for the Oxfordshire Branch of the Inland Waterways Association (with 18,000 members nationally) has produced a note of the Associations concerns about the proposal
 - The design & access statement for this application has been prepared without any consultation with or consideration of the principal users of the Oxford Canal, boaters.
 - In Lincoln town centre moorings have had to be abandoned because boats stopped using them when a similar development was built there.
 - The council's local plan at policy ESD 17 says "We will protect and enhance the Oxford Canal corridor and proposals which would be detrimental to its character or appearance will not be permitted"

- Boaters and Banbury Civic Society and Banbury Canal Partnership consider that this proposal will not enhance and will be detrimental to the Oxford Canal Corridor in Banbury.
- The Inland Waterways Association assists Banbury Town Council in the organisation of Banbury Canal Day. The association is unable to envisage how this event can continue, if these plans are implemented.
- The association urges Councillors not to approve these plans but, as owners of a very large part of the site, to require the developers to work with representatives of the canal users to develop a scheme which enhances the canal

2.2 County Councillor Mark Cherry (Division: Calthorpe/Ruscote)

“Whilst not against this development, I am not happy with the demolition of the General Foods Sports and Social Club, when the public uses the club. The owner tells me the club is booked up until 2017 with weddings. Scottish Widows is trying to force this through without consultation and with no replacement for the club. That is why I have signed a petition against demolition of the club which is well used by the public.”

3. Consultations

The full text from each consultee can be viewed at www.cherwell.gov.uk

- 3.1 **Banbury Town Council** – The Town Council object to the application on the following grounds: Land is part of the designated ‘cultural quarter’. Concerns over access for lorries delivering to the supermarket. A further letter of comments have now been received and is **attached** to the end of this report
- 3.2 **Crime Prevention Officer (Abridged)** I do not wish to object to the proposals at this time. Assuming approval is given, and to assist the authority and the applicants in providing as safe a development as possible, and to aid the latter in ultimately achieving Secure By Design accreditation, I make the following observations. I also suggest that the applicants contact me at their earliest convenience to discuss incorporating crime prevention design within the reserved matters application.
- Parking design and management regimes require careful thought to ensure the provision will work for all across a mixed use development such as this. Differing access needs (perhaps on different levels) and/or security measures may be required and regardless, PM principles should be incorporated within designs/management practices (as at the existing Castle Quay (CQ) car parks).
 - External communal public areas should be designed to promote ownership and appropriate types and levels of activity. Their design and lighting/landscaping/street furniture etc. should create feelings of safety whilst actively deterring opportunities for criminal and anti-social behaviour. Covered areas should not encourage unwanted congregation or vagrancy.
 - Segregated pedestrian routes must be well lit and follow SBD principles regarding lineation, width and landscape design etc.
 - Extension of the current CQ/town centre CCTV system/s to cover the proposed development needs to be considered at the earliest opportunity and an operational requirement carried out to ensure whatever is provided is fit for purpose and cost effective (advice on this is available via SBD).

- Lighting, landscaping and CCTV proposals should be drawn up at the same time to ensure an holistic approach is taken so that none impinge upon or compromise the other/s.

Matters such as CCTV, security, management, and lighting can be picked up as conditions upon the submission of the subsequent reserved matters submission

- 3.3 The comments above are made on behalf of Thames Valley Police and relate to Crime Prevention Through Environmental Design only. You may receive additional comments from TVP with regard to the impact of the development upon policing and a request for the provision of infrastructure to mitigate against this impact.
- 3.4 **Banbury Civic Society** – We...reluctantly conclude that the proposals as submitted are an exercise in exclusion and denial: exclusion from the town centre and denial of the sad state of CQ1. If consented in its present form, this outline consent will mean that CQ2 is shackled to a set of parameters that will result in CQ2 suffering all the same problems as CQ1: lack of town centre access, overshadowing, detachment and a general air of sadness at what it could have been. It will not benefit the historic town centre and will instead slowly drain what remaining life the town centre has into Scottish Widows hands, yielding by far the majority of the town-centre retail and leisure economy into the hands of a single pension fund. This is a very big ask. We would ask that the application be refused or withdrawn, pending a more comprehensive proposal being tabled that addresses these key issues.
- 3.5 **Environment Agency** – Following a review of the additional information and a subsequent meeting held with the applicants flood risk consultant we are now in a position to remove our flood risk objection, subject to the inclusion of a number of conditions to any subsequent planning permission granted.
- 3.6 **Environmental Agency Ecologist** – Requests the following works to the river Cherwell;
1. Gravel in channel
 2. Meanders above and below extent of works
 3. Creation of small backwaters on north bank/sports centre
 4. Removal of sycamores and replace with native shrubs on south bank
 5. Planting of native, standard, trees on south bank, possibly Alder.
- 3.7 **Canal and River Trust** (Abridged) The Canal & River Trust objects to the proposal on three grounds.
1. The applicant has failed to demonstrate that the proposal would not have a detrimental impact on the Oxford Canal corridor, by reason of its overshadowing, poor integration and connectivity, potential unmitigated ecological impacts and loss of amenity for boaters and towpath users contrary to Section 7 of the National Planning Policy framework and Policies D10 and D1 of the Cherwell Adopted Local plan 2004.
 2. The increased usage of the canal towpath as a sustainable transport route serving the site without suitable mitigation measures would result in increased pressure on the Trust to provide a safe and accessible link to the towpath and would result in further degradation of the towpath surface contrary to Policy

TR4 of the Cherwell adopted Local plan and paragraphs 29-41 of the National Planning Policy Framework.

3. The applicant has failed to demonstrate that the proposed bridge would not cause material harm to navigation and pedestrian safety and that it would not adversely impact on views and the historic canal environment contrary to Policy D3 of the Cherwell adopted local plan 2004.

These objections may be overcome by the provision of further detailed information considering the impact of the proposal on the canal and by the provision of suitable mitigation measures. A letter has now been received **withdrawing** their objection. This letter was attached to the written update presented to Committee on 9 January 2014

3.8 **The Banbury Canal Partnership** (a recently formed group of likeminded individuals with an interest in promoting the Oxford Canal as a general amenity) welcomes the principle Canal & of the redevelopment of the Castle Quays 2 area. However, the BCP has a number of concerns regarding the proposed redevelopment. The BCP appreciates that the above proposal is made in outline only but as many of these matters are fundamental to the success or otherwise of the project, the BCP's position is that it must object to the proposed development until such time as these concerns are addressed and further information on the proposed plans are provided. They object on the following grounds

- The applicant has failed to demonstrate that the proposal would not have a detrimental impact on the Oxford Canal corridor, by reason of its overshadowing, poor integration and connectivity, potential unmitigated ecological impacts and loss of amenity for boaters and towpath users contrary to Section 7 of the National Planning Policy framework and Policies D10 and D1 of the Cherwell Adopted Local plan 2004.
- The increased usage of the canal towpath as a sustainable transport route serving the site without suitable mitigation measures would result in increased pressure on the Trust to provide a safe and accessible link to the towpath and would result in further degradation of the towpath surface contrary to Policy TR4 of the Cherwell adopted Local plan and paragraphs 29-41 of the National Planning Policy Framework.
- In particular the developer has failed to mention how moorings may be affected between The Museum and the Tom Rolt Bridge by their proposed plan. In particular future night time activity and the effect of any proposed canopy.

They comment that these objections may be overcome by the provision of further detailed information considering the impact of the proposal on the canal and by the provision of suitable mitigation measures

Cherwell District Council Consultees

- 3.9 **Rights of Way Officer** – (Abridged) No objection.
- 3.10 **Ant-Social Behaviour Manager** – (Abridged) Noise. No objection subject to conditions.
- 3.11 **Ecologist** – (Abridged) No objection. Development could provide opportunities to increase habitats and biodiversity at the site.

- 3.12 **Urban Designer** (Abridged) Overall I am comfortable with the principle of development along the Oxford Canal and the form that this is taking.
- 3.13 **Landscape Officer** – (Abridged) Proposed Public Space. As proposed in the D & A statement there is an opportunity here to create a high quality pedestrian route between. The public spaces must have a very high quality of design, hard and soft materials, and construction techniques in order to create a cohesive, legible, urban landscape of distinctive character and feel.
- 3.14 **Glazed Canopies:** I am not against the principle of these glazed structures. The Parameters Plan Canopies indicates a substantial area of glazed canopy that includes the Oxford Canal and the frontage of the foodstore. The environmental constraints on landscaping schemes under these structure must be considered: increased wind tunnelling, lack of rain and temperature rises associated these enclosing structures. Automatic irrigation systems will have to be incorporated with planting schemes to ensure that that is a regular supply of moisture for establishing plants.
- 3.15 A substantial number of trees are going to be removed in order to implement this development. With the proposed removal of so many trees it is crucial to replace them with mature standards that provide immediate visual impact and amenity.
- 3.16 **Tree Officer** – (Abridged) No objection subject to conditions.
- 3.17 **Planning Policy** (Abridged) There are some elements of the proposals that are inconsistent with the development plan in relation to specifically where retail uses should be located in Banbury. However in relation to this part of Banbury, previous local plan boundaries in this area are considered out of date due to reasons which include the implementation of the Castle Quay development and the need to encourage economic growth. The proposals are in general conformity with the NPPF and contribute towards achieving a significant number of its objectives. The proposals are consistent with the draft Submission Local Plan, including Policy Banbury 9, which identifies this site for re-development. The Local Plan encourages the economic growth of Banbury for retail, leisure and other town centre uses and the proposals will contribute significantly towards achieving this. There is no Policy objection to these proposals.
- 3.18 **Conservation Officer** – No objection
- 3.19 **Environmental Health Officer** – Air Quality: No objection. Contaminated Land: No objection.

Oxfordshire County Council Consultees

- 3.20 **Transport Strategy** – Object. Insufficient Transport Assessment, impact on Banbury's road network and sensitive junctions and additional traffic through Banbury Cross.
- 3.21 **Transport Development Control** – Object for the reasons given below

Access

The proposed new access from Cherwell Drive is a highway safety concern for the following reasons:

1. The access is unlikely to comply with the maximum permitted gradient of 1 in 12;
2. The proposed new access is located too close to the proposed supermarket exit onto Cherwell Drive to the north;
3. Drivers egressing the new access will need to look back over their shoulder to the Cherwell Drive/ Spiceball Park Road junction to the right, whilst having limited vision to the left due to the nearby bridge structure.
 - It is considered that the combination of these three factors makes this an unacceptable location for a new highway access. The access arrangements for servicing vehicles for must be amended to use Spiceball Park Road instead.

Layout

The proposed removal of the roundabout at the south end of Spiceball Park Road does not leave satisfactory turning and manoeuvring arrangements for vehicles on the highway. The alternative proposed arrangements are not conducive to pedestrian safety in the vicinity.

Transport Assessment (TA)

- There is still an inconsistency in total proposed floor space between the TA and the application form. Clarification is required on the proposals for A4 Drinking establishment (see Detailed Comments 2 – Size of Development).
- The TA does not provide adequate justification for the proposed parking levels for the site. The development proposes to provide an additional 111 car parking spaces, which is likely to be an under-provision.
- The loss of town centre car parks during the construction phase of the development also needs to be appropriately addressed.
- Clarification is required of the TA's proposed transferred trips from supermarkets within Banbury and outside Banbury to the new foodstore- ref Retail Impact Assessment.
- The impact of committed developments has not been fully assessed (see Detailed Comments 8 - Technical Note 1).
- The gravity modelling is too simplistic and needs to be revised (refer to separate comments / report from Transport Strategy team)
- Not all the highway junctions agreed at pre-application scoping discussions have been included in the TA. These junctions must be included in the TA to fully ascertain the impact of the proposed development. Please note that updating the committed development impact and gravity modelling work will alter the development's currently stated impact on junctions within the study area.

Developer Contributions

- A transport/ highways contribution will be required to appropriately mitigate the impact of this development.

Legal Agreement required to secure:

- S38 Agreement – adoption of private land for use as public highway
- S278 Agreement – works on the public highway
- S106 Agreement –transport / highway financial contribution required

Latest position

Oxfordshire County Council has written to clarify their position on this application and to express their concerns about the transport assessment submitted in support of the application..

Since the receipt of that letter a meeting was held on Monday 6th January with County officers and the applicants and their consultants to try to overcome these concerns. Additional documentation was supplied to the County Council's consultants but on Thursday 9th January 2014 OCC e-mailed to comment that

"I'm sorry to say that Atkins has not had sufficient time to complete the analysis of the modelling exercise in regards to the proposed Spiceball development. Unfortunately this means we are unable to provide anything further to our initial comments on the application. Without this crucial information we would not be comfortable in making a determination of the likely impact of the development on the transport network".

In the light of those comments the application was deferred at the last meeting

Since that meeting the applicants have supplied considerable additional information including transport assessment information, revised access arrangements for the service yard by the proposed cinema, proposed turning arrangements adjacent to the Mill, car park information. This was provided in week beginning 20th January. The HPM is awaiting the opinion of the highway authority. It is expected that this will be received before the Committee and will be included in the written update

- 3.22 **Drainage** – The area is known to have flooding issues and the developer has acknowledged that within the FRA documents. The developer should look for improvement on the current flood levels where possible.
- 3.23 **Property** – Support subject to...conditions concerning legal agreement and informatives
- 3.24 **Ecology** – No objection
- 3.25 **Economy, Skills and Training** – No objection
- 3.26 **Archaeology** – No objection subject to...conditions, legal agreement and informatives
- 3.27 **Minerals and Waste** – No objection

Other Consultation Responses

- 3.28 **Inland Waterways** – Inland Waterways Association (who represent 18,000 members nationally):- whilst they support the principle of development on this site, believe that the present proposals from Scottish Widows for Castle Quay 2 are likely to be seriously detrimental to mooring on the canal in Banbury, especially overnight, and also to the towing path. Further, the association is unable to envisage how the very popular annual event on the first Sunday in October, Banbury Canal Day (2013 was its tenth consecutive year), can continue, if these plans are implemented.
- 3.29 The association supports the objections to this application, and their reasons for doing so, by the Canal & River Trust and the Banbury Canal Society. In particular the

association considers that the location and design (especially their height, mass and relationship with the canal) of the hotel, cinema and A3/A4 units are in breach of policies D10 of the Cherwell Local Plan 2011 and policy ESD 17 of the Cherwell Local Plan 2006-2031 - Draft Submission (approved for submission by council on 21st October) - The majority of the requirements of which are not met by these proposals. Further, this proposal, far from enhancing the canal, as development is required so to do under Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as it relates to the Oxford Canal Conservation Area (designation implemented at the Cherwell District Council, Executive meeting of 1st October 2012), is detrimental to the waterway, the towing path and their amenity values.

- 3.30 In particular, the future use of the moorings between The Museum and Tom Rolt Bridge (there can be up to 35 boats moored in this section) is unclear. Note that these moorings are fundamental to Banbury Canal Day though they would of course be affected throughout the year. The environment which would be created here could, many boaters think it will, make these moorings unusable, particularly at night. Greater use of the towing path as a transport link without mitigation (see below) would also increase the potential for conflict between boaters and others and could lead to dangerous situations developing. The Canal & River Trust have also said "The canopy would affect a number of 48 hour visitor moorings. It is not clear if the proposal intends to suggest that these moorings are re-located"
- 3.31 "Boaters have already expressed concern with regard of the impact of the proposed canopy and the possible loss of or degradation to the quality of both the visitor moorings both the visitor and disabled moorings".
- 3.32 Further, Canal & River Trust have also drawn attention to the application's reliance on the towing path as a transport route for pedestrians and cyclists without there being any provision for upgrading it. At the lift bridge beside Tooley's Boatyard there is already, at times, conflict between the requirements of safe navigation and other users of the towing path. At the lock there is already the potential for dangerous situations to arise for both navigators and others especially at times when there is significant traffic on either the canal or the towing path. A higher level of general traffic on the towing path without mitigation measures is therefore unacceptable.
- 3.33 It is because of these risks that on Banbury Canal Day the association provides skilled attendance at both the lift bridge & the lock. This application seeks to use and usurp the canal environs, whereas Castle Quay 1 principally faced away from the canal and merely created a monstrous barrier between town and canal.

4. Relevant National and Local Policy and Guidance Policy Considerations

4.1 Development Plan Policy

Adopted Cherwell Local Plan 1996

Policy C1 Protection of sites of nature conservation value
Policy C2 Development affecting protected species
Policy C4 Creation of new habitats
Policy C23 Conservation areas
Policy C25 Scheduled Ancient Monuments
Policy C28 Development control – Design
Policy C29 Oxford canal design considerations

Policy ENV1 Development likely to cause detrimental levels of pollution
Policy ENV12 Development on Contaminated Land
Policy R7 Protection and enhancement of the recreational roles of the Oxford Canal and River Cherwell
Policy T2 New hotels/motels within settlements
Policy TR1 Transportation Funding

Cherwell Local Plan - Proposed Submission (August 2012) and Focussed Consultation (March 2013) (PSLP)

The Proposed Submission Local Plan was published for public consultation in August 2012. A further consultation on Proposed Changes to the draft plan was undertaken from March to May 2013. On 7 October 2013, the draft Submission Plan was approved by the Council's Executive. The Plan was presented to Full Council on 21 October 2013 and Full Council endorsed it as the Submission Local Plan. Submission to the Secretary of State for Communities and Local Government is anticipated by the end of January 2014. The Submission Plan supersedes previous stages of the emerging Local Plan.

Full Council also endorsed the recommendations to:

- Note that the Infrastructure tables in the draft Local Plan are to be replaced in due course by a full Infrastructure Delivery Plan (IDP) prior to Examination.
- Delegate approval of minor text changes (including updating the thematic maps and final Monitoring Framework) to the draft Submission Local Plan text to the Head of Strategic Planning and the Economy in consultation with the Lead Member for Planning and its transfer in its publication format for Submission.
- At the present time the emerging Plan carries weight, however it will not form part of the statutory Development Plan until the Examination process is complete and the Plan is formally adopted by the Council (anticipated mid 2014).
- The policies listed below are considered to be material to this case and are not replicated by saved Development Plan policy:

Policy SLE2 Securing dynamic town centres
Policy SLE3 Supporting tourism growth
Policy ESD1 Mitigating and adapting to climate change
Policy ESD2 Energy hierarchy
Policy ESD3 Sustainable construction
Policy ESD4 Decentralised energy systems
Policy ESD5 Renewable energy
Policy ESD6 Sustainable flood risk management
Policy ESD7 Sustainable Drainage Systems (SuDS)
Policy ESD8 Water resources
Policy ESD10 Protection and enhancement of biodiversity and the natural environment
Policy ESD13 Local landscape protection and enhancement
Policy ESD15 Green boundaries to growth
Policy ESD16 The character of the built environment
Policy ESD17 The Oxford canal
Policy ESD18 Green infrastructure
Policy Banbury 9 Spiceball development area

4.2 Other Material Policy and Guidance

National Planning Policy Framework

The Town and Country Planning (Consultation)(England) Direction 2009

Planning for Town Centres: Practical Guidance on Need, Impact and Sequential Approach (DCLG, December 2009)

5. Appraisal

5.1 The issues raised by this development are:

- Planning Policy
- Sustainable Development
- Prematurity and Need
- Sequential Assessment and Retail Impact
- Impact on Town Centre
- Visual Impact, Design and Layout (outline so all indicative)
- Rights of Way
- Noise
- Trees
- Biodiversity/Ecology
- Flood Risk
- Impact on Heritage Assets
- Archaeology
- Drainage
- Noise
- Highways/Transport
- Heritage
- Contaminated Land
- Air Quality
- Neighbour Amenity
- Comments from the Canal and River Trust (CRT)
- Amended Plans
- Other Matters
- Loss of Sports and Social Club
- Adequacy of car parking
- Planning obligations
- Engagement

Planning Policy

5.2 It is important to set the context of the proposed development in relation to national and local plan policy. At the heart of the National Planning Policy Framework (the Framework) is the presumption of sustainable development. The Framework states there are three dimensions to sustainable development: environmental, social and economic.

5.3 At paragraph 14 the Framework clarifies the principles of plan-making and decision-taking and states that for decision-taking this means “approving development proposals that accord with the development plan without delay.” The Framework also clarifies the position where

development plans are absent or where plans are silent or out of date. In this scenario, planning permission should be granted unless;

“-any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
-specific policies in this Framework indicate development should be restricted.”

- 5.4 In seeking to build a strong, competitive economy the government is “committed to securing economic growth in order to create jobs and prosperity...ensuring that the planning system does everything it can to support sustainable economic growth.” (para. 18 – 19 of the Framework). The Framework also recognises the importance of ensuring the vitality of town centres and encourages planning policies to be positive and promote competitive town centre environments which set out policies for the management and growth of centres over the plan period.
- 5.5 The adopted Cherwell Local Plan 1996 does not allocate the site for any specific use or development and could be construed to be out of date in this regard. However, other saved policies (as listed at Section 4) are relevant to the proposed development and are consistent with the Framework and attract weight.
- 5.6 Policy Banbury 7 – Strengthening Banbury Town Centre of the Proposed Submission Local Plan extends the town centre boundary “to facilitate additional town centre development that will broaden the attraction of central Banbury and assist economic growth.” Policy Banbury 9 – Spiceball Development Area identifies the site as an area for development which would
- “deliver a shared vision of the District and County Councils: to deliver a further extension to the town centre to provide new retail and leisure uses, provide opportunities for a strengthened night time economy, and enhance the appeal central Banbury to both residents and visitors. It will be important that development of this area capitalises on its excellent linkages with the existing town centre and in particular the recreational potential of its canal and river front location. A high standard of design is essential.”
- 5.7 It is clear that there is a particular emphasis on the need to promote and provide sustainable economic growth within the Framework and the policies within the Framework constitute the Government’s view of what sustainable development in England means in practice for the planning system. It is also clear that to secure a strong, competitive economy, the emphasis is for local planning authorities to “plan proactively to meet the development needs of business and support an economy fit for the 21st century.” and that, “significant weight should be placed on the need to support economic growth through the planning system.”
- 5.8 It is the view of the HDM that policies Banbury 7 and Banbury 9 of the Proposed Submission Local Plan are consistent with the provisions of the Framework and therefore weight can be attached to them. The Proposed Submission Local Plan is not an adopted local plan. However, it has been through public consultation and on 7th October 2013, the draft Submission Plan was approved by the Council's Executive. The Plan was presented to Full Council on 21st October 2013 and Full Council endorsed it as the Submission Local Plan. Submission to the Secretary of State for Communities and Local Government is anticipated by the end of January 2014. The Submission Plan supersedes previous stages of the emerging Local Plan.
- 5.9 Saved policies of the adopted Cherwell Local Plan 1996 will be considered later within this report. However, in assessing the principle of the development, it is considered that the proposal is consistent with the provisions of the Framework and is therefore acceptable.

Sustainable Development

- 5.10 Paragraph 6 of the Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. This is reaffirmed at paragraph 14 which

sets sustainable development as a “golden thread running through both plan-making and decision-taking. The Framework states there are three dimensions to sustainable development: environmental, social and economic

- 5.11 It is important to note that these roles impact on each other and should not be undertaken in isolation. To achieve sustainable development “economic, social and environmental gains should be sought jointly and simultaneously through the planning system.” (paragraph 8 of the Framework)
- 5.12 There is clearly an economic benefit to the proposed development which will secure both inward investment to the town and employment opportunities. It will also aid in providing a complete economy by adding to the draw that Banbury can offer both residents and visitors both during the day and adding to the night time economy. For these reasons it is considered that this is the right land in the right place and the right time to develop Spiceball.
- 5.13 As the Framework identifies at paragraph 8, “economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities.” The development would take place on a brownfield site and does not constitute EIA development. The inward investment provides an opportunity to improve biodiversity through landscaping along the river Cherwell and Oxford canal and to enhance the built environment at the site. Moreover, the additional leisure uses would provide services that would contribute towards Banbury’s cultural and social needs.
- 5.14 The Sustainability Strategy submitted with the application indicates the energy hierarchy to be adopted for the development. This includes reducing energy demand as much as possible through passive feature designs to include improved building fabric, low levels of air permeability, improved U-values and solar control glazing and solar shading. The development seeks to attain at least very good under the BREEAM New Construction Sustainability Assessment. It is “proposed to deliver a development that encompasses environmental, social and economic aspects, resulting in a shopping centre with sound sustainability credentials.” (Section 5 of Sustainability Strategy).
- 5.15 Given the above, it is considered that the proposed development accords with the Frameworks requirement to achieve sustainable development at the site.

Prematurity and Need

- 5.16 It has been suggested that as a result of the Proposed Submission Local Plan awaiting its formal Examination in Public (EiP), the proposal is premature and should be refused until such time as the plan is adopted. The objector makes it clear that their objection stems from the loss of the Club and a decision cannot be properly made until such time as the policies with the plan are tested through the EiP.
- 5.17 The Planning System: General Principles 2005 states at paragraph 17 to 19 that,

“17. In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new

development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. Where there is a phasing policy, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.

18. Otherwise, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging DPDs. The weight to be attached to such policies depends upon the stage of preparation or review, increasing as successive stages are reached. For example:

- Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question.
- Where a DPD has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.

19. Where planning permission is refused on grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process.”

5.18 Paragraph 19 makes it clear where the onus of proof lies. It states that where planning permission is refused on grounds of prematurity, the local planning authority will need to demonstrate clearly how the development concerned is so substantial and significant that the grant of permission for it would prejudice the outcome of the DPD process. In this case, the site is being promoted through the emerging plan for exactly the development that is proposed. It is also considered that policies Banbury 7 and 9 are consistent with the provisions of the Framework in ensuring a strong, complete economy and weight can be afforded to them. Moreover, notwithstanding the objections to the plan, there is a possibility that the policies will be adopted. The local planning authority cannot put on hold every development while the emerging plan goes through its adoption process and to refuse this application on prematurity grounds could not be justified.

5.19 With regard to need, it is suggested that as the applicant has failed to address the need for the development and again the application should be refused. The objector states that,

“The evidence base has not been met by the applicant to show there is a need for the proposed development. This therefore cannot be a “*free for all*” site which is often the case in the absence of local plan policy and incorrect application of the three dimensional test set out in the NPPF.”

5.20 The objector continues by stating that “there is no overriding need for a development of this kind as the current units in the town centre have to be exhausted.” It should

be noted that need is not a test that the Framework or local plan policy requires. In this case, there is an emerging local plan policy which supports the development and one which carries weight as it is consistent with the provisions of the Framework. The land uses proposed by the application are in line with the strategy to strengthen the town centre retail base and enhance the leisure offer and the night time economy. The scheme will also deliver on the long standing desire to reintroduce a main food store offer in the town centre. In this respect the application proposals will satisfy an identified need for new development in Banbury.

Sequential Assessment and Retail Impact

5.21 In order to assess the potential impact of the development on the town centre, a sequential assessment would need to be undertaken by the applicant. Paragraph 24 of the Framework states that,

“Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.”

5.22 Paragraph 26 of the Framework continues by stating that,

“When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq. m). This should include assessment of:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.”

5.23 Planning for Town Centres: Practice Guidance on Need, Impact and Sequential Approach sets out the sequential approach at paragraphs 5.4 - 5.7. The onus rests on the applicant to demonstrate compliance with it. It should also be noted that it is not part of the Framework’s sequential test for applicants to demonstrate that a proposal has scope for disaggregation.

5.24 Therefore, as the site is in an edge of town¹ centre location, is not a site that is allocated for retail development through local adopted policies and the floorspace exceeds 2, 500 sq. m, the Framework requires the applicant to demonstrate that there are no sequentially preferable

¹ For retail purposes, this is a location that is well connected to, and within easy walking distance (i.e. up to 300 metres) of the primary shopping area. . For all other main town centre uses, this is likely to be within 300 metres of a town centre boundary. (Planning for Town Centres: Practical Guidance on Need, Impact and Sequential Approach, DCLG, December 2009)

sites available, suitable and viable and there would be no significant adverse impacts, in terms of the impact on centres and in terms of wider environmental, economic and regeneration impacts. The applicant has produced a Retail Impact Assessment (RIA) to address these matters which is available to view via the Council's website.

- 5.25 The RIA provides an analysis of sequentially preferable sites and undertakes a "health check" of relevant centres. The assessment concludes that there are no sequentially preferable sites suitable or available for the development. The following sites were considered as part of the assessment.

Land at Bolton Road

- 5.26 The RIA reports that the site is too small for the applicant's requirements and is currently occupied by various users and the car park remains in operation. The site is not available within the short to medium term. As a result, the site is not available or suitable to the applicant's needs.

Calthorpe Street Car Parks

- 5.27 The site presents numerous land assembly issues such as the re-location of existing users such as T K Maxx and Farmfoods along with the provision of car parking. The site is too small for the applicants requirements and is not available within the short to medium term. As a result, the site is not available or suitable to the applicant's needs.

Canalside

- 5.28 The site is identified as a mixed use development under policy Banbury 1: Banbury Canalside of the emerging local plan which seeks the provision of housing, retail, office and leisure uses, a primary school and public open space. The site covers some 25ha. The RIA identifies that any future development of the site would need to resolve issues relating to land ownership which is a significant matter. The viability of the scheme is dependent on housing and the ability to deliver a link between the station and new housing. On this basis the site is not considered available, suitable or viable.

White Lion Walk and Church Walk

- 5.29 This site at 0.6ha is too small for the applicants requirements.

Christchurch Court

- 5.30 The site comprises three separate sites and is physically constrained. The site provides a collective 2ha and the sites redevelopment is not a viable option as it would result in floorspace being split over the three sites. As a result, the site is not considered suitable or viable.

Spiceball Development Area

- 5.31 As already reported, this site is identified for redevelopment under policy Banbury 9: Spiceball Development Area of the emerging local plan. The site is less than 300m from the primary shopping area and is an edge of town location which should bring forward retail, leisure, hotel and car parking uses. The RIA states that assessments have been undertaken and there are no abnormal or extraordinary costs associated with redevelopment of the site. The site is owned by the applicant and Cherwell

District Council who have indicated a willingness to bring forward development of the site in line with the objectives of the emerging policy Banbury 9.

Conclusion of Sequential Assessment

5.32 The site is therefore considered viable, suitable and available for the development. The site is also promoted as a area that can deliver new uses that would enhance the appeal of Banbury to both residents and visitors. The development therefore passes the sequential assessment.

Impact on the Town Centre

5.33 As the minimum area for the proposed development is over the 2, 500 sq. m threshold as defined at paragraph 26 of the Framework, a retail impact assessment is required. The “health check” within the RIA focuses on the impact the proposed development would have on Banbury. The advice within the Planning for Town Centres, Practice Guidance on Need, Impact and Sequential Approach is still relevant although it accompanied the now superseded PPS4. In assessing the health of Banbury the applicant has used the well-established key indicators referred to in Annex D to PPS4. In the absence of any other indicators, I see no reason why these indicators cannot be used, provided they are used in the context of the Framework. Information from Experian Goad (28th May 2012 and secondary information from the CBRE Retail Study (October 2012), CoStar property information and relevant planning applications have also been used to inform the study.

5.34 The RIA states that the Goad Centre Report (May 2012) identified the retail composition of Banbury as follows:

Use	No. of Units	% of Total	Floorspace (sq. m gross)	% of Total
A1 Convenience	32	7.8	4,199	5.18
A1 Comparison	172	42.0	49,239	60.7
A1 service	45	11.0	3,466	4.25
A2 service	42	10.2	7,264	9.0
A3-A5 service	59	14.4	8,547	10.54
Miscellaneous	10	2.44	1,496	1.84
Vacant	50	12.2	6,921	8.53
Total	410	100%	81,112	100%

5.35 The report concludes that “the overall density of main town centre uses in Banbury town centre represents a ‘healthy mix’ that is broadly typical of a centre of this size.” (Paragraph 4.14 of RIA).

5.36 In assessing the impact of the development on the town centre the applicant sets out their methodology at paragraphs 6.14 – 6.20 of the RIA with “Assumptions and Assessment Parameters” set out at paragraphs 6.21 – 6.26. The RIA then assesses the impact via the following routes:

- CBRE Convenience Goods Capacity Assessment
- Population and Expenditure
- Convenience Turnover of Existing Stores and Centres
- Turnover of the Proposal and Commitments
- Impacts

- Leisure Assessment and Context

5.37 Concluding the assessment, the RIA reports that it assessed the “impact of the proposal on a solus and cumulative basis having regard to the policy considerations...[and] the key test in national policy set out in paragraph 26 of the NPPF.” It is agreed that this is correct interpretation. Paragraph 6.61 of the RIA concludes the following:

- Impacts associated with the proposal in the design year (2018) are low and represent no threat to the vitality and viability of Banbury or any other centre, even allowing for cumulative effects.
- The proposal represents no threat to investment on the basis of the expenditure analysis set out in Appendix 2 [of the RIA]. We conclude that the proposal, if permitted will not act to deter investment in Banbury. The location of the development relative to both the town centre and primary shopping area has potential to enhance the performance of the centre through ‘linked trips’. These benefits are anticipated in emerging Local Plan Policy, specifically through Policy Banbury 9, which seeks mixed-use development in the Spiceball site to include ‘town centre uses’. The emerging plan also proposes the inclusion of the site within the town centre boundary. Development of the site is therefore likely to have beneficial impacts due to its favourable location and the attractive mix of uses proposed.
- There is significant growth in leisure spending in the catchment area. The local economy has demonstrable capacity to accommodate additional leisure development of the type proposed in this case. Qualitative analysis undertaken by CBRE confirms gaps in the town’s hotel and leisure offer. We conclude that leisure impacts overall are likely to be beneficial, the scheme enhancing the diversity of Banbury’s leisure offer.

5.38 It is clear that the leisure offer within Banbury town centre can be expanded which Policy Banbury 9 seeks to redress. With the evidence submitted through the RIA, the HDM is confident that the development proposed would increase leisure development within the town centre without impacting on its ability to draw future investment into it. Moreover, the proposal would offer a unique opportunity to develop an under used part of the town to provide additional leisure uses and an economic benefit to the town.

Visual Impact, Design and Layout

5.39 The site is situated on the edge of the town centre which is dominated by the existing development at Castle Quay which backs onto the Oxford Canal. Adjacent to the existing Castle Quay is the “south car park” which provides 530 spaces. The “north car park” lies on the other side of the canal, opposite the “south car park” and is low enough to be discrete in the streetscene. However, it is identified by the applicant’s agent as being “a poor use of a site so close to the town centre” (DAS, page 8).

5.40 The General Foods Sports and Social Club lies between the “north car park” and Banbury Museum. The DAS identifies this site as being “in an important position and key node in the development of the site...” The museum is set at a higher level with a café at ground floor which overlooks the canal. A bridge links the museum to the shopping centre. Further south adjacent to the museum is Chamberlaine Court which provides sheltered housing along with parking and amenity areas. This building is outside of the application site. Towards the end of the site is the Mill Arts Centre which is also outside of the application site, although its car park is within the red line area.

- 5.41 Spiceball Park Road dissects the site between the river Cherwell and Oxford canal. The area where the old Spiceball building was demolished is now given over to parking and is devoid of planting. Mature trees are located towards the rear of the buildings that face the canal. Landscaping is also provided within the grounds of Chamberlaine Court and the Sports and Social Club. The site is visible from Cherwell Drive in the west and Concorde Avenue in the east. These are important vistas in establishing the sites presence within the town centre. Any development must take advantage of these view points and provide strong elevations with quality materials.
- 5.42 It is not surprising that the current site is urban in character, is largely uninspiring and does little to enhance the character of the area which includes the Oxford canal Conservation Area and River Cherwell corridors. The site does not offer much in the way of landscaping to soften its urban appearance. However, the development offers an opportunity to provide a scheme that will not only enhance the leisure offer for the town, but also the way the site integrates with new and existing buildings, opportunities to enhance the canal and river and the sites prominent location on the edge of the town centre and its connectivity to the town centre and the new Spiceball centre.
- 5.43 As part of the development proposal, the social club is proposed to be removed in favour of a more inclusive contemporary public space with hard/softscape terracing to reflect the level change between the rear entrance of the museum and the finished level of the public space (canal level). A new bridge will be provided at this point to cross the canal. A "Green Link" will then be created to allow direct access between the existing Castle Quay, the site and the new Spiceball centre. A terrace overlooking the Oxford canal is proposed and it is important that this area has a close relationship with the existing tow path and builds on and reinforces the character of this feature. It will be critical that there are good connections between the two areas, with generous steps providing links at strategic places. Consideration should also be given to the way the two areas can be treated to make it a unifying feature, with consistent design that will help to draw people through the site.
- 5.44 There are some concerns that the landing points of the bridges might create areas of separation between the terrace and towpath. Further consideration of these areas will be required at a Reserved Matters stage. The site running north – south between Castle Quay and Spiceball is a critical element of the scheme. This route needs to mitigate a number of level changes and the design needs to be inviting for pedestrians. Care should be taken to ensure there are no barriers.
- 5.45 The central green area is an important space and careful consideration is required as to how this area is accessed from the tow path and terrace areas. There is concern that it is becoming complicated around the tow path area, especially in relation to the connections to the museum and this should be looked at in detail at the Reserved Matters Stage. The separation between the central green and the shared surface square is shown as steps and these should be designed to accommodate multiple uses i.e. long steps that can also act as south facing seats.
- 5.46 There is also some concern about the transition up to and across the food store car park; though it is acknowledged that there have been some amendments to this area. This space needs to be inviting with a substantial area dedicated to the public realm, to draw pedestrians up onto the car parking area. The change of levels at this location and the character of the car park could form barriers to movement that will need to be considered in detail.
- 5.47 Spiceball Park Drive is currently a car dominated environment and a number of changes to this route would improve the way it is used by pedestrians. There is the opportunity for the nature of this route to change once it has passed the shared surface square and the level of vehicular movement has been reduced. Improved

paving and landscape treatment would help it become a more pedestrian focused area.

- 5.48 The proposed canopy offers an opportunity to create a unique piece of architecture that would heighten the presence of the canal at this part of the town centre. Although the exact canopy to be installed is to be agreed, it is considered that this offers Banbury and the Oxford canal an opportunity to draw people to the area and will be a unique selling point for the town as a whole.
- 5.49 The principle of development along the Oxford canal and river Cherwell and the form that this is taking is acceptable. This is a complicated site which presents challenges to create a development that enhances the built environment and the impact it has on the public realm. The proposed foodstore will need to be carefully designed in detail to be acceptable. The detail design, level changes and materials used in the public realm will be critical in pulling together different areas of the site. The development proposals fit into the wider structure of the town centre and it will be important that these proposals fit within the wider strategic plan for the area as emerging in the Banbury Masterplan.

Rights of Way

- 5.50 Banbury Footpath No 103 (Oxford Canal towpath) runs through this application site. The Rights of Way Officer has considered the proposal and comments that no Public Path Order will be required to enable the development.

Noise

- 5.51 Prior to the submission of this application the Anti-Social Behaviour Manager was contacted by WSP UK Ltd, environmental consultants, acting on behalf of the applicants. It was agreed that environmental noise would be a factor that constrained their clients proposed development and that the impact of noise on existing residential elements of the town within the immediate vicinity of the proposed development. It was recognised that the amenity of these dwellings in respect of noise required protection. The methodology for carrying out an investigation of the existing noise climate in the area was agreed. In support of this planning application WSP have submitted report 37056 dated 25/07/13. The document contains the results of on-site noise measurements and at chapter 5 sets out the agreed environmental noise limits for the development. These must be conditional if the development progresses and a detailed submission will be required that demonstrates how these noise targets will be achieved for approval prior to the commencement of development.

Trees

- 5.52 It is proposed to remove 60 trees to facilitate the re-development of the site. It should be noted that the majority of these are small ornamental and fruit trees. It does include the removal of a Category A tree – T60 (Lime). There appears to be plenty of scope for replacing these trees to enhance the proposed development. The trees to be retained should be adequately protected during the re-development of the site. A

method statement, as highlighted in the submitted Arboricultural Implications Assessment, should be submitted providing details of appropriate tree protection methods. A landscaping scheme with the proposed trees to be planted should be submitted. The trees to be planted should be of an adequate size to provide sufficient immediate impact. No objection subject to conditions.

Biodiversity/Ecology

- 5.53 The site currently has little value for wildlife although the river and its immediate environs are an important local wildlife corridor, in particular for otters, water voles and badgers. The buildings proposed for demolition have no potential to support roosting bats and no other European protected species are likely to be present on site. It is possible that reptiles and nesting birds are utilising the trees, scrub and grassland on the site and some form of mitigation will be required to avoid disturbing/harming them.
- 5.54 It is important that the river corridor is retained in a form that will enable wildlife to continue using it, as appears to be shown on current layout plans. It is also important that any lighting is directed away from the river and that none is placed within the proposed 8m buffer strip. The ecological enhancements put forward in the 2013 ecological survey by WSP should be incorporated as far as possible, in order to achieve a net gain in biodiversity. They include:
- The creation of an 8m river buffer zone, incorporating new native tree & habitat planting.
 - The enhancement of the existing river bank. Currently this is not specified in detail but the use of pre-planted coir rolls / new native marginal planting and removal of the existing sycamore trees should be considered as part of this.
 - Sensitive lighting design to ensure the river corridor is kept as dark as possible.
 - Provision of bird nesting and bat roosting opportunities within the new buildings on site. This is an ideal opportunity to include provision for swifts, which are present in the town.
 - The installation of a green/brown roof, or planting wall.
- 5.55 This development is also an opportunity to improve the river habitat, as suggested by the Environment Agency. Their preferred method would be to create several backwaters and some new meanders within the river channel, thereby increasing the range of habitats present and providing additional flood storage. This is a relatively inexpensive way of providing biodiversity gain that should be given serious consideration.

Flood Risk

- 5.56 The site lies within Flood Zone 3. As a result, the Environment Agency were consulted. The Environment Agency have responded as follows:

“We have previously been consulted at the Forward Planning stage on the proposed redevelopment of the Spiceball site which is included as an allocated site in the draft Local Plan and as such has been sequentially tested.

The site has been affected by extensive and repeat flooding in recent history and while we understand that the development of this site is key to the overall redevelopment of Banbury Town centre it is essential that the flooding constraint continues to be dealt with through all stages of the planning process.

The application is for Outline planning permission with all matters reserved except access. Despite this, a significant amount of work has been carried out based on an assumed layout.

We have previously queried whether the scale and design of the development is essential as there is a lot of intervention required to enable the floodplain constraint to be managed rather than avoided. We have previously raised this point in our objection letter of 19 November 2013 and note that this is picked up as point 2 in BWB letter ref SN/RG/BMW399 dated 19 November 2013.

While it is clear that additional modelling work will be required at Reserved Matters stage we feel it is important that as the design progresses the key design principles outlined in the BWB Flood Risk Assessment are secured within any outline permission which is granted.

Following a review of the additional information and a subsequent meeting held with the applicants flood risk consultant we are now in a position to remove our flood risk objection, subject to the inclusion of a number of conditions, detailed under the headings below, to any subsequent planning permission granted.

Without the inclusion of these conditions we consider the development to pose an unacceptable risk to the Environment.”

- 5.57 The conditions requested by the Environment Agency are considered acceptable and are included within the conditions at the end of this report.

Impact on Heritage Assets

- 5.58 The Conservation Officer has considered the proposal and comments that,

“At present, the Oxford Canal is valued but under-used by residents of Banbury. The annual Canal Day shows how much of a crowd are drawn to it when highlighted by publicity and activities, and the increased access and footfall that goes with these has a benefit to the canal, museum and shopping areas. Unfortunately, the canal is currently accessed via the rear end of a shopping centre, and footfall is generally from car park access, and for the adjacent museum. As a valuable historic asset, recently designated as a conservation area, it is important to increase footfall here without compromising the historic integrity of the area. Recent thinking has moved back to the ideals of the Society for the Protection of Ancient Buildings, where modern interventions are obvious, but has also shifted towards looking for sympathy and growth to provide longevity for the historic environment. By encouraging people towards this area, active involvement in the canal should be increased and more notice taken of the value of the site. I would suggest that a management plan for the preservation and enhancement of Tooley's Boatyard, the Mill Arts Centre and the museum should be included in any further application so that these historic sites are put front-and-centre, informing the development of the site rather than restricting growth or being pushed to the sidelines.

The canal was responsible for much of the early growth of the town due to the coal and cheese trade, and therefore the significance of these sites should not be minimised. I am encouraged by the introduction of interactive sites such as bridges and cafes to the area. The rear of buildings within public areas of Banbury could be made much more of, and hopefully if the correct approach is followed here, to redevelop the rear of Castle Quay, then other areas would follow suit, enhancing the historic area. Regarding the integration of new buildings into the historic environment, I am not sure that the timber-clad agricultural buildings would be a good model to follow, as this area of Banbury has always been predominantly brick, with some stonework. I would rather see these materials, with glass and steel, to reflect the traditional warehousing and industrial roots of this area, and steer away from agricultural connections of the rural villages (DAS p.19). The canopy is a bold statement regarding the marrying of old and new technologies and design. It is a system which has worked on a much larger scale at other sites: the roof at St Pancras and The British Museum for example, and that its success in the proposed location will depend greatly on the quality of materials and architecture “

- 5.59 While the Conservation Officer raises concerns regarding the proposed materials and the integration of the canopy, these are matters of detail will be considered at the reserved matters stage.

Archaeology

- 5.60 The site is located in an area of archaeological potential as identified by the archaeological desk based assessment submitted with the application. The development area is located over the north eastern side of the site of Banbury Castle, built by Alexander Bishop of Lincoln, who died in 1148 (PRN 1816). The castle stood on the north side of the Market Place and was destroyed after the Civil War in the C17. It was surrounded by an inner and an outer moat and the NE section of this moat is located within the area of the proposed development, beneath the current multi-storey car park and social club. Given the depths of the proposed impact of this development the archaeological remains of the moat could be disturbed. It is possible that the moat deposits could be waterlogged and therefore preserve organic materials related to the use of the castle and the development of the town which would not have normally survived. Medieval settlement often grew up around castle sites and it is also possible that previously unrecorded settlement evidence could survive on the site and would be disturbed by any development.
- 5.61 It is therefore recommended that the applicant should be responsible for implementing a staged programme of archaeological work. This can be ensured through the attachment of a suitable negative condition as suggested by the Archaeological Officer at the County Council.

Drainage

- 5.62 The area is known to have flooding issues and the developer has acknowledged that within the Flood Risk Assessment documents. The County Council have suggested that developer should look for improvement on the current flood levels where possible. Conditions are suggested to ensure that drainage details are agreed with the County Council before development commences.

OCC Property

- 5.63 Part of the application site includes land (pavements / hard landscaping) owned by Oxfordshire County Council on the northern edge of the Mill Arts Centre. Furthermore the County Council has an agreement with Cherwell District over the use of some of the parking spaces within the application site immediately to the west of the Arts Centre.
- 5.64 The application proposals should avoid prejudicing the ability of the County Council to both continue to use the parking spaces and to provide full and unhindered access to the Arts Centre via the main entrance on the northern side of the site.
- 5.65 The development includes parking spaces adjacent to the Mill Arts Centre which could fetter the expansion of the Mill. The District and County Council have been collaborating upon exploration of development opportunities for the Mill. The County Council would encourage proposals that did not rely upon the retention of the car parking area between the Mill Arts Centre and the adjacent housing block.

Highways/Transport

- 5.66 The County Council as Local Highway Authority states that “Whilst the county council would support the principle of redevelopment of this site and is committed to finding a planning solution for the proposal, the inaccuracy of much of the transport assessment work and the omission of key elements of the transport agreement has led to an overall objection to the application as it is presented.” The full text is appended to this report.
- 5.67 The County Council have expanded on the issues and have provided technical notes to accompany their concerns. Regrettably, the concerns raised by the Local Highway Authority were received late in the consideration of the application which has resulted in the applicant not being able to deal with the matters raised. It must be stressed that the County Council do not object to the principle of the development, rather that the detail needs addressing and expanding upon and additional material is required to satisfy County’s concerns.
- 5.68 Negotiations are continuing and a tripartite meeting involving OCC, CDC and the applicant was held on the 6th January. Further discussions have been held since the last meeting, and a written update will be made at the Committee .

Contaminated Land

- 5.69 The Environmental Health Officer considered Listers Draft Phase I Desk Study Report (report no.13.03.006, dated April 2013) and the Phase II Ground Investigation Report (report no. 13.003.006a, dated June 2013).
- 5.70 These reports have been undertaken in line with current guidance and the conclusions that no additional investigation or remedial works are required to be protective of human health are accepted. He recommends that an informative be attached to the application regarding unexpected contamination.

Air Quality

- 5.71 The Environmental Health Officer reviewed the WSP Air Quality Assessment, dated October 2013, which was submitted with this application. This assessment has been undertaken in line with current guidance and in line with the previously agreed approach. It is noted that future predictions in air quality have not assumed a decrease in emissions from vehicles as vehicle technology improves, as these improvements have not been in line with those predicted to date.
- 5.72 The report concludes there will be a moderate adverse impact on air quality in Castle Street, with the development resulting in the nitrogen dioxide air quality objective being exceeded with the development, but not without. It is shown to be exceeding, or close to the objective, elsewhere, with or without the development. A slight adverse impact on receptors in North Bar is also predicted. It is noted Castle Street is near to the area where detailed assessment works have identified exceedences of the annual mean nitrogen dioxide air quality objective, requiring an air quality management area to be declared. The findings of this assessment indicate that Castle Street will also need to be within an air quality management area as a result of the development.
- 5.73 The Environmental Health Officer notes that the monitoring at receptor 11 represents a significantly higher concentration than that used in the modelled assessment, so may not reflect actual concentrations due to the local geography which can't be accounted for in the modelling software (although the verification of the model is accepted for the purpose of this assessment).
- 5.74 It is recommended that additional monitoring is secured for a period during the operational phase to demonstrate the impact of the development on air quality. Additionally some mitigation works would be appropriate, particularly to limit the impact of vehicle movements to the west of the development and near to the receptors on Castle Street. It is noted there is a framework travel plan included in the application with a view to further developing this as reserved matters application stage approaches. I would like to see air quality, and those areas where national air quality objectives are exceeded, considered further in this plan to limit the impact of air quality from the development.
- 5.75 It is also noted that further liaison with the LPA is needed to ensure the construction impacts on air quality are suitably mitigated is also proposed, which is acceptable but should be agreed before commencement.

Neighbour Amenity

- 5.76 A number of objections have been received from the residents of Chamberlaine Court which is a sheltered housing. Residents have raised several issues such as noise impact as a result of the development. One has to firstly consider Chamberlain Court's position within the town centre and the noise that is currently generated and whether the proposed development would significantly alter the noise levels experienced at the site. After receipt of these comments the applicants have met with these objectors.
- 5.77 The Anti-Social Behaviour Manager (ASBM) was consulted on this application and no objections are raised to the development. It was agreed with the ASBM and the agent that "environmental noise would be a factor that constrained their clients proposed development and that the impact of noise on existing residential elements

of the town within the immediate vicinity of the proposed development.” (ASBM’s comments). It is recognised that the amenity of the occupants of Chamberlaine Court in respect of noise required protection and the methodology for carrying out an investigation of the existing noise climate in the area was agreed. These must be conditional if the development progresses and a detailed submission will be required that demonstrates how these noise targets will be achieved for approval prior to the commencement of development. A condition requiring these details to be submitted is attached.

Comments from the Canal and River Trust (CRT)

- 5.78 The Canal and River Trust (formerly British Waterways) have raised an objection to the development on three grounds (as noted at paragraph 3.7).
- 5.79 Some of the comments raised by CRT relate to the detailed design of the scheme and will be addressed at the reserved matters stage. Comments regarding the hotel and screening which would result in loss of land to the front of the building and its use during “Canal Day” is noted. However, additional high quality open space will be created on the north side of the canal, including the terrace and park at the beginning of the green link. These new areas will provide approximately 1,150 m² of useable space, which exceeds the area of car parking which will be lost by the new hotel (approximately 1,000 m²).
- 5.80 Substantial portions of the public realm will also be covered by the proposed roof over the canal and this will make for a more successful day, especially if the weather is not good. It is hoped that the proposal will enhance this important day in the canal calendar, not only providing new and improved vantage points, but also as a result of the raised awareness of the canal and the perception of it as a high quality environment and asset to Banbury.
- 5.81 The CRT also comment that the bridge link from the new development and the museum visually disconnects the ‘green link’ from the canalside. It would be preferable if the green space was read as an extension or widening of the towpath. It is recognised that improved connectivity to the museum is an important consideration and need not detract from the sense of continuity in the public realm between the towpath and the green link.
- 5.82 The towpath and the green link are both axial spaces and run perpendicular to each other. As such the junction between the two will be read as an integrated connection between two urban places with distinct and complimentary characters. The applicant is keen to develop this concept with CDC and the CRT as part of the detailed design process.
- 5.83 In terms of detailed design the opportunity exists, as with the canal roof, to deliver new infrastructure which celebrates its location at the heart of the canal, as opposed to a piece of purely functional infrastructure. The applicant will continue to work with the CRT to develop the detailed design as the project develops.
- 5.84 The CRT have also commented on the funnelling effect the canopy will have at the site and the shadowing the buildings will cause on the canal. With regard to funnelling, the basic wind speed for Banbury is relatively low in comparison with the rest of the UK. The site is also offered protection from the prevailing wind (from the south east) by Banbury Town Centre and the existing Castle Quay complex. Funnelling of wind along the canal will be given consideration at the detailed design

stage as wind pressures can be increased by approximately 25% when the gap between buildings is less than twice the building height. However, because the canal runs in a north-west/south-east direction, the funnelling effect of wind loads will be reduced by approximately 20%. Therefore, when compared with general prevailing winds, the actual increase in wind pressures due to funnelling will only be approximately 5%. The introduction of building canopies and street furniture will also assist in baffling the wind and will reduce wind pressures.

- 5.85 In summary, the introduction of the canopy is not considered to have an adverse impact on wind pressure along the canal and detailed wind modelling will be undertaken at the detailed design stage to mitigate any localised impacts, for example, through choice of roof profile or extent of coverage.
- 5.86 Turning to shadowing, many canalside areas are characterised by tall buildings nearby (for example warehouse buildings). Whilst such buildings do reduce sunlight to towpaths, they can create specific and attractive environments. The existing buildings adjacent to the canal already often put the southern towpath into shadow in winter months. While the CQ2 development will admittedly result in further reduction in sunlight, this impact must be weighed against the extensive benefits of the new facilities and public realm improvements which will be delivered. The area which will be put into shade is principally hard landscaping, with few retained or proposed trees. In order to address any safety concerns there is potential to install trace heating below the towpath to prevent icing over.
- 5.87 To increase daylight and sunlight and the sense of openness at towpath level Parameters Drawings OP-10 to 12 have been amended to allow for the upper floors of the hotel to be further set back from the canal. Indicative Sketch Drawing SK39 highlights the implications of this amendment. Overall, it is not considered that the impacts of overshadowing when considered against the wider benefits, are sufficient grounds to warrant refusal.
1. 5.88 Other matters have also been raised such as roosting birds, cleaning of the canopy and implications for mooring of boats below the canopy. The installation of anti-roosting spike under the canopy will be considered at the detailed design stage to control roosting birds. The cleaning/maintenance regime for the canopy will be determined at the detailed design stage. Given the potential for the use of self-cleaning glass it is considered that the need for cleaning solution detergents (which could fall into the canal) can be avoided. The space beneath the canopy is of sufficient volume to ensure that smoke from the engines and stoves of canal boats is dispersed. It is therefore not envisaged that moored canal boats will result in conflict with restaurant/bar operators. It should be accepted that the character of this stretch of the canal will change. The applicant's proposals intensify its use relative to a town centre location, and this is not an unreasonable result. The notion of a quiet mooring is incompatible with this to an extent. The moorings will remain, but boaters will probably lose their 'privileged' quiet enjoyment.
- 5.89 With regard to contributions towards towpath improvements, the applicant is committed to maximising the opportunities for sustainable means of access to CQ2. Access by foot is a key element, hence the proposal to extend the opening hours of key routes through CQ1 commensurate with the opening hours of CQ2. Beyond this, and in recognition of connections to the rail station, the applicant is prepared to accept a contribution to towpath improvements, the detail of which will need to be negotiated with CDC and the CRT. Further discussions have resulted in agreement between the two parties about the extent of the improvements to be funded.

Amended Plans

- 5.90 To achieve the desired sense of enclosure and place, Parameter Drawing OP-14 has been adjusted to show a minimum building height at the western end of Block B (opposite the hotel) of 14m above the towpath. Deviations in section are shown on Parameter Drawings OP-14 & 15. Deviations in plan are shown on Parameter Drawings OP-10,11 & 12. To ensure that the quality of the public realm is not undermined Parameter Drawing OP-11 has been amended to show a reduction in the maximum deviation parameter for the podium.
- 5.91 The analysis on Page 3 of the Design and Access Statement indicates that the Spiceball area of Banbury features larger, taller buildings in more open space. When viewed from the Town Centre to the south and west the proposed hotel will be substantially screened by the existing expanse of the Castle Quay Shopping Centre. From the north the hotel has the benefit of being seen across the generous open spaces of Spiceball Park with the Tom Rolt bridge immediately in front. From the east the hotel will be screened by the new cinema and restaurant block to the north of the canal. The perceived mass of the hotel is further reduced when viewed in context because its ground floor is set at towpath level, whereas the adjacent road is approximately 4.5m above this.
- 5.92 To reduce the perceived mass of the hotel Parameters Drawings OP-10 to 12 have been amended to allow for the upper floors of the hotel to be further set back from the canal. This will also increase daylight and sunlight and the sense of openness at towpath level.
- The supermarket forecourt has been lowered as much as possible to ensure that the level change is minimised to 0.9m. In addition a broad landscaped route is provided across the car park. The reinforcement of the green link in this area will be addressed at the detailed design stage.
- 5.93 The offset from Spiceball Park Road has already been increased and the feedback from potential foodstore operators has been that maximising car parking at the forecourt level is essential to achieving a viable unit. The ramp location has been adjusted to achieve a separation distance of 6m allowing some landscaping to be introduced as screening.
- 5.94 While the balance between stepped connections and useable space on the upper terrace is a detailed design issue, the design aspirations for this area are illustrated by the image of the Yorkshire Herald Waterside Development contained in the Design and Access Statement.
- 5.95 Convenient step free access and connectivity between towpath and terrace needs to be balanced. The proposal enjoys the different feel of the two halves of the terrace; and the ramp which encloses the western half sits well with the more sheltered feel with the gallery of the cinema oversailing above.
- 5.96 Steps are provided from the bank of the Cherwell up to the southern end of the pedestrian bridge over the river. Treatment of the northern elevation of the undercroft and lower level parking of the foodstore will be critical in achieving this sense of integration and some first thoughts are shown on pages 50 & 51 of the Design and Access Statement.

- 5.97 There has been extended careful study of the position of the supermarket. The position as proposed makes the best use of the overall site of this part of the Spiceball area. Discussions with potential tenants have confirmed that the viability of a high quality foodstore in the centre of Banbury relies on achieving a certain quantity of customer parking up at store level and this means that the store cannot be moved any further to the northwest.

Other Matters

- 5.98 A large number of letters have been received commenting on the canopy and overall development and its impact on the Oxford canal. These matters have been dealt with under the response to the Canal and River Trust
- 5.99 In response to the comments of the Civic Society and others the applicants have supplied some illustrative options for upgrading the appearance the canal elevations of the existing Castle Quay development; have confirmed that Castle Quay will be open for pedestrians for hours that are commensurate with the trading hours of CQ2 tenants to enable customers of the cinema and A3 uses to pass through to other areas of the town which are part of the night-time economy; creation of a DDA compliant link between Station Road and the canal towpath ; and confirmed that it will maximise the enhancement of the river corridor.
- 5.100 Comments have also been made regarding the impact of the proposals on the Mill Arts Centre, the Bus Station.
Officers appreciate that the future of both the bus station site and existing Mill Arts Centre are subject to continuing speculation. The bus station has been identified as a potential development site within the emerging Town Centre Masterplan SPD, but considerable work remains in respect of what is capable of being delivered on this site (assuming the bus station can be relocated). The future of the Mill Arts Centre is largely in the County Council's hands (subject to funding). It would be premature for the applicant to speculate how these sites may come forward, but it is sufficient to say that in the HDM's opinion the proposal does not prejudice in any way the existing operation of either facility or their future enhancement/development.

Loss of General Foods Sports and Social Club

- 5.101 The application site includes the building and land associated with the Sports and Social Club. It is proposed to demolish the building as part of the development proposals. It must be stressed that the grant of planning permission does not override private land ownership rights and it does not convey additional rights over third party land. This is a private matter between the applicant and the Sports and Social Club.. If the Sports and Social Club are not willing to engage with the applicant, then it is possible that the applicant may ask the Council to use its Compulsory Purchase Order powers. However, this is a matter for later consideration.

Planning Obligations

- 5.102 The applicant has indicated a willingness to provide financial contributions to off-set the impact of the development on local infrastructure and amenities. The amount of contributions required are detailed within the Single Response from the County Council.

To date a completed agreement to secure the financial contributions has not been received. The completion of the County Council's deliberations upon the most recent submission will enable progress to be made upon finalising the agreement but will include

- i. Appropriate contributions to junction improvements (specific junctions, sums and phasing of any payments to be agreed);
- ii. Commitment to opening up pedestrian routes through CQ1 (routes and timing of opening to be agreed);
- iii. Contribution to towpath enhancements as agreed with the Canal & Rivers Trust (sum and timing of payment to be agreed);
- iv. Provision of new bus stop on Cherwell Drive and associated bus shelter (procurement, costs and timing to be agreed);
- v. Submission of detailed Travel Plans (in accordance with the Framework Travel Plan) prior to occupation, with appropriate monitoring fee; and
- vi. Contribution to footway enhancements and crossing facilities in the vicinity of the site, including tactile paving and additional footways (detail, cost and phasing of any payments to be agreed).

A number of these commitments may be better suited within the associated S278 Agreement, which will capture the modifications to Cherwell Drive and Spiceball Park Road (amongst other works), alongside provisions such as signage improvements.

It is suggested that a meeting be held between CDC, OCC and the applicant to crystallise the full.

- 5.103 Any contribution sought needs to comply with the guidance in the Framework and CIL Regulations which states that they should be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. To date the figures presented within the Single Response from County have not been agreed by the applicant and no indication has been given as to whether or not they are likely to be.

Engagement

- 5.104 With regard to the duty set out in paragraphs 186 and 187 of the Framework, no problems or issues have arisen regarding the submission 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.

Conclusions

- 5.105 Clearly this is a significant application for the future of the town centre. As would be expected there is a need to for a balance to be struck between the various competing issues and considerations set out above. In your officers opinion the land use elements are correct, and the overall size and disposition of the buildings as described by the parameters plans is acceptable. Negotiations with the Canal and Rivers Trust and the County Council appear to have reached a position where we can confidently predict a suitable outcome. Clearly the scheme will result in significant improvements to the offer of the town centre with a new cinema, A3 units and supermarket, and an improved and unique canal-side environment. Balanced against this is the potential need to relocate the members club which is subsumed by

the proposals, and the perceived harm to the residential amenity of adjacent elderly persons accommodation.(and the still current concerns about traffic matters) .On balance the HDM considers that the scheme should be approved.

6. Recommendation

Approval subject to the following:

- a) The applicant successfully addressing the objection raised by OCC Highways;
- b) The completion of a legal agreement to secure financial contributions;
- c) Referral to the Secretary of State; and
- d) The following conditions (as necessarily amended o take into account late representations from OCC/CRT/and others).

TIME

1. No development shall commence until full details of the layout, scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4 of the Town and Country Planning (General Development Procedure) Order 2010 (as amended).

2. In the case of the reserved matters, application for approval shall be made not later than the expiration of three years beginning with the date of this permission.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4 of the Town and Country Planning (General Development Procedure) Order 2010 (as amended).

3. The development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.

Reason - This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 4 of the Town and Country Planning (General Development Procedure) Order 2010 (as amended).

PLANS

4. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Drawing No. OP-01 Site boundary, OP-02 Demolition, OP-03 Excavation, OP-04 Land use (Level 0), OP-05 Land use (Level 1), OP-06 Land use (Level 2), OP-07 Land use (Level 3-6), OP-08 Areas schedule, OP-09 Deviations

in plan level 0, OP-10 Rev P1 Deviations in plan level 1, OP-11 Rev P1 Deviations in plan level 2, OP-12 Rev P1 Deviations in plan level 3-6, OP-13 Canopies, OP-14 Rev P1 Deviations in height sheet 1, OP-15 Deviations in height sheet 2, OP-16 Bridges, OP-17 Active frontages, OP-18 Pedestrian site circulation, OP-19 Pedestrian access routes, OP-20 Landscape, OP-21 Vehicle access and circulation, SK/039 Hotel Section, S(52)-01 Proposed Drainage Layout, HP01 Rev C Proposed Highway Works, HP02 Rev B Proposed Highway Layout on Existing Survey and the following supporting documents: Planning Statement, Heritage Statement, Design and Access Statement, Construction Environmental Management Plan, Sustainability Strategy, Ecological Survey, Retail Impact Assessment, Economic Benefits Statement, Energy Statement, Air Quality Assessment, Acoustic Assessment, Arboricultural Survey and Archaeological Assessment.

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

ENVIRONMENT AGENCY

5. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) BMW/388/FRA rev A undertaken by BWB Consulting dated 11th October 2013 and the following mitigation measures detailed within the FRA:

- The operational areas of the ground floor food store set be set above the 1 in 100 year plus 20% flood level
- Flood resilient construction techniques to be included for all development up to the 1 in 1000 year undefended flood level

6. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason - To reduce the risk of flooding to the proposed development and future occupants

7. Prior to approval of Reserved Matters a final flood management and level for level floodplain compensation scheme shall be submitted to and approved by the Local Authority. Level or level floodplain compensation shall be implemented in line with the scheme proposed on plan Floodplain Compensation Analysis at Former Leisure Centre BMW/388/WSK12 P1

Reason – To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided.

8. No development shall take place until a scheme for the enhancement of the River Cherwell is submitted and agreed to in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The schemes shall include:

- The creation of meanders within the channel of the River Cherwell to the North and South of the site
- The removal of young sycamore trees aligning the bank and replace with

- native shrubs and larger native trees set back from the top of the bank
- The placement of grave within the channel.
- The creation of small backwaters, joining the River Cherwell

Reason - To ensure that the proposed development contributes to the *nature conservation and fisheries* value of the site in accordance with the National Planning Policy Framework (NPPF) paragraph 109, which requires the planning system to aim to conserve and enhance the natural and local environment by minimising impacts on biodiversity. Paragraph 118 of the NPPF also states that opportunities to incorporate biodiversity in and around developments should be encouraged..

9. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason - This site is located over alluvial deposits (Secondary A Aquifer) that in turn sit over the Charmouth Mudstone (Unproductive Stratum). The site is within a flood plain and therefore groundwater will be present in the alluvium. Construction may mobilise contamination and if hot spots are encountered within the alluvium these should be dealt with in an appropriate manner.

ARCHAEOLOGY

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

Reason - To safeguard the recording of archaeological matters within the site in accordance with the NPPF (2012)

11. Prior to any intrusive works taking place on the site and following the approval of the first stage Written Scheme of Investigation referred to in condition 10, a programme of archaeological evaluation, investigation and recording of the application area shall be carried out by the commissioned archaeological organisation in accordance with the approved first stage Written Scheme of Investigation.

Reason - In order to determine the extent, character and significance of the surviving remains of archaeological interest and to safeguard the recording and inspection of matters of archaeological importance on the site in accordance with NPPF (2012).

12. Prior to any intrusive works taking place on the site and following the completion of the archaeological evaluation, investigation and recording referred to in condition 11, a report of the archaeological evidence found on the application site and full details of a second stage Written Scheme of Investigation based on the findings, including a programme of methodology, site investigation and recording, shall be submitted to and agreed in writing by the Local Planning Authority.

Reason - To safeguard the recording of archaeological matters within the site in accordance with NPPF (2012).

13. Prior to any intrusive works taking place on the site (other than in accordance with the second stage Written Scheme of Investigation) and prior to the commencement of the development the further programme of archaeological investigation shall be carried out and fully completed in accordance with the second stage Written Scheme of Investigation approved under condition 12 All post excavation work including all processing, research and analysis necessary to produce an accessible and useable archive and its deposition, and a full report for publication, shall be submitted to the Local Planning Authority in accordance with the second stage Written Scheme of Investigation approved under condition 12 as soon as practically possible after the completion of the on-site investigation.

Reason - To safeguard the recording of archaeological matters within the site in accordance with the NPPF (2012)

ECOLOGY

14. An avoidance and mitigation scheme for nesting birds and reptiles, based on the measures detailed in the 2013 WSP ecological survey report shall be submitted to and approved by the Local Planning Authority before development commences. All works to proceed in accordance with the approved scheme.

Reason -To protect habitats of importance to biodiversity 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.

15. An ecological enhancement scheme, based on the measures detailed in the 2013 WSP ecological survey report and including nesting provision for swifts and enhancement of the river channel shall be submitted to and approved by the Local Planning Authority before development commences. All works to proceed in accordance with the approved scheme.

Reason -To protect habitats of importance to biodiversity 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.

ABORICULTURAL

16. **Submit Landscaping Scheme**

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

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
- (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
- (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

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

17. Retained Tree

- a) No retained tree shall be cut down, uprooted, damaged or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS3998: Recommendations for Tree Works.
- b) If any retained tree is cut down, uprooted, destroyed or dies, another tree shall be planted in the same place in the next planting season following the removal of that tree, full details of which shall be firstly submitted to and approved in writing by the Local Planning Authority.

In this condition a “retained tree” is an existing tree which shall be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) shall have effect until the expiration of five years from the date of this permission.

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

18. Arboricultural Method Statement (AMS)

Prior to the commencement of the development hereby approved, an Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837 shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS.

Reason – To ensure the continued health of retained trees/hedges and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into 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.

19. Planting Pits (hard landscaped areas)

Prior to the commencement of the development hereby approved, and notwithstanding the submitted details, full details, locations, specifications and construction methods for all purpose built tree pits and associated above ground features, to include specifications for the installation of below ground, load-bearing ‘cell structured’ root trenches, root barriers, irrigation systems and a stated volume of a suitable growing medium to facilitate and promote the healthy development of the proposed trees, 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 and specifications.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the

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

20. Planting Pits (soft landscaped areas)

Prior to the commencement of the development hereby approved, and notwithstanding the submitted details, full details, locations, specifications and construction methods for all tree pits located within soft landscaped areas, to include specifications for the dimensions of the pit, suitable irrigation and support systems and an appropriate method of mulching, 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 and specifications.

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

NOISE

21. Prior to the commencement of the development hereby approved, full details of on-site noise measurements and agreed environmental noise limits for the development shall be submitted to and approved by the Local Planning Authority. Thereafter, and prior to the first occupation of the buildings hereby approved, the buildings shall be insulated and maintained in accordance with the approved details.

Reason - To ensure the creation of a satisfactory environment free from intrusive levels of noise and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

DRAINAGE

22. Prior to the commencement of the development hereby approved, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, and prior to the commencement of any building works on the site the approved surface water drainage scheme shall be carried out and prior to the first occupation of any building to which the scheme relates the approved foul sewage drainage scheme shall be implemented. All drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".

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.

USE

23. Where applicable, the premises shall be used only for purposes falling within Class A3 and A4 specified in the Schedule to the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 and for no other purpose(s) whatsoever.

Reason - In order to maintain the character of the area and safeguard the amenities of the occupants of the adjoining premises in accordance with Policy C28 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

PHASING

24.

PLANNING NOTES

1. In addition, we recommend that the LPA consider including a condition that the flood management of the site is implemented over the lifetime of the development. One consideration should be the maintenance of the culverts under Spiceball Park Road. If these culverts were to become blocked this could potentially lead to an overland flood flow route being created across the car park. The Flood Risk Assessment and subsequent discussions with BWB Consultancy have confirmed that further flood risk work will be required as the design of the site progresses. This point could be explored further at that stage.
2. The West Thames Area (Environment Agency South East) is operating a risk based approach to planning consultations. As the site lies between 1 and 5 hectares we do not intend to make a bespoke response on surface water drainage for this proposed development. The following standing advice is provided:
3. In order for the development to be acceptable in pluvial flood risk terms we would advise the following:

Our flood risk standing advice contains guidance (http://www.environment-agency.gov.uk/static/documents/Utility/FRSA_LPA_v_3.1.pdf) on what FRAs need to include. Key points for developments in Flood Zone 1 (cell F5) are:

- Surface water runoff should not increase flood risk to the development or third parties. This should be done by using Sustainable Drainage Systems (SuDS) to attenuate to at least pre-development runoff rates and volumes or where possible achieving betterment in the surface water runoff regime. (The applicant should contact Local Authority Drainage Departments where relevant for information on surface water flooding.)
- An allowance for climate change needs to be incorporated, which means adding an extra amount to peak rainfall (20% for commercial development, 30% for residential). See Table 5 of Technical Guidance for NPPF.
- The residual risk of flooding needs to be addressed should any drainage features fail or if they are subjected to an extreme flood event. Overland flow routes should not put people and property at unacceptable risk. This could include measures to manage residual risk such as raising ground or floor levels where appropriate.

We trust the standing advice in this letter will assist you in reviewing the flood risk matters of the proposed development and in determining the planning application. We recommend that you liaise with your Land Drainage Engineer in consideration of the above.

4. Under the terms of the Water Resources Act 1991, and the Thames Region Land Drainage Byelaws, prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 8 metres of the top of the bank of the River Cherwell, designated a 'main river'.
5. All sewage or trade effluent should be discharged to the foul sewer if available subject to the approval of Thames Water Utilities or its sewerage agent.
6. The car parking area of the development may need to be drained via a Class 1 oil separator to reduce the risk of oil pollution. The developer should consult Agency Pollution Prevention Guidelines No 3 to ascertain the appropriate type. A download can be obtained from www.environment-agency.gov.uk/ppg
7. 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.
8. 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.
17. The applicant shall draw to the attention of the Local Planning Authority the presence of any unsuspected contamination encountered during development. In the event of contamination to land, water or environment being encountered, no development shall continue until a programme for investigation and/or remedial work, to be performed by a competent person, has been submitted in writing and approved by the Local Planning Authority. No part of the development shall be occupied until remedial, monitoring and certification of works have been undertaken and a remediation and validation reports submitted to and approved by the Local Planning Authority. For further information please contact the Council's Environmental Protection Officer.

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 as set out in the application report.