

Ward: Banbury Neithrop **District Councillors:** Councillors Dhesi and Johnstone

Case Officer: Bob Duxbury **Recommendation:** Approve

Applicant: Barwood Capital and Mondelez International

Application Description: Proposed development of a new Waitrose food store with car parking and access arrangement onto Southam Road . Demolition of existing building

Reason for Committee consideration: Major application

1. Site Description and Proposed Development

- 1.1 This application relates to a site of 1.44 hectares on the western side of Southam Road, Banbury. It is currently part of the Jacobs Douwe Egberts site and lies to the north of the Southam Road Cemetery. On the opposite side of Southam road various bulky goods retailers and car showrooms are located behind their own car parks. There is currently no access to the JDE site from this road frontage.
- 1.2 The site is currently mainly laid to grass with groups of mature trees within it. There is a single storey building towards the southern end of the site which will be removed. The land is surplus to the requirements of JDE
- 1.3 The proposal is to construct a single storey food store with a floorspace of 3,695 sq.metres of which the sales area would be 2,697 sq.metres. . It would have a dedicated 220 space car park. The food store would be located at the southern end of the site. Two vehicular accesses are proposed , one at the southern end of the site to provide access to a service yard. The main customer car park entrance would be located at the northern end of the site, with a ghosted right turn arrangement off-set from the similar arrangement at the junction of Marley Way with Southam Road. It ius said that the proposal will generate 200 full and part time jobs.
- 1.4 The application is accompanied by a Planning Statement (incorporating a sequential assessment); a design and access statement; retail impact assessment; flood risk assessment; ecological appraisal; transport assessment and other technical assessments all of which are available on the Council's web-site

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter and press notice, and site notices. The final date for comment was 11 June 2015. Two letters have been received from residents of Banbury commenting in the following way-

- Will affect the prospects for town centre development on the canal side which may be undermined and may not therefore go ahead
- Contrary to recently approved strategic plan
- Further retail-only developments on the fringes of the town will reduce the chances of the town developing a real character and attract visitors and businesses from elsewhere
- Contrary to High St First principle
- Concern about congestion and consequent effect upon air quality

One further letter expresses support for the proposal in terms of both improving the appearance of the site, applauding the design, welcoming investment from a company such as Waitrose and the 200 jobs that it would bring

- 2.2 An objection has been received from planning consultants acting for Aberdeen Asset Management dated 16/6/15 which is attached as appendix 1. They have also since written again in response to the applicants latest letter in which the comment

The applicant fails to address our comments about planned investment and impact on town centre vitality and viability. Planned investment would be compromised by the development which is evidence of significant adverse impact.

In the context of the sequential test, the applicant has shown insufficient flexibility in the assessment of the Spiceball site. A number of commercially based reasons are provided but these are not the necessary planning-based judgements on which the sequential test is based. Failure of the sequential test means refusal of planning permission.

Furthermore, not only is the overlay plan misleading (the Spiceball scheme is in outline where layout is not fixed), but the applicant suggests that no compromise can be made on the format of the store because Banbury is not the best trading location. Whilst demonstrating insufficient flexibility on format and scale, this also supports our view that the town centre is vulnerable. This is evidence that the impact of the development on the town centre would be significantly adverse. Where this is the case, NPPF directs refusal.

Because the applicant has not responded to the important matters raised by us on retail impact, we contend that Members may not have all of the information to make a decision on this application. However, if Members are minded to make a decision, then this must be one of refusal on the grounds of significant adverse retail impact and failure of the sequential test.

- 2.3 The Banbury Civic Society regrets that it must object to this application. We understand that there is enthusiasm for having a Waitrose in Banbury, both for the goods it offers and for its potential to attract shoppers from a wide area to the town, generating additional footfall in the town centre. This is the wrong site however. The Southam Road is already notoriously congested (notably northwards from the Warwick Road traffic lights), whilst the Southam road is also too far from the town centre for there to be any possibility of the new store generating significant additional town-centre footfall. The site is certainly not town-centre, nor is it even truly edge-of-centre. With Waitrose having been offered the Bolton Road site and the old Spiceball site, the Southam Road site clearly fails the sequential test. To this we would add that there is even a

further site that has not been considered. This is the old Sainsbury's site at Calthorpe Street (now called the Calthorpe Centre). This has recently been offered for sale, subject to the rental income of £507,000 p.a., with an asking price of £6.80 million. Whilst this is a lot of money, it has the clear advantage over other sites of being genuinely town centre and having a purpose-built modern supermarket and modern surface car park already on the site.

Cherwell Council have already wasted a lot of money contriving a SPD for Bolton Road with Waitrose as the anchor store. Scottish Widows have similarly invested an enormous amount of money in designing Castle Quay 2 around a Waitrose anchor store only. With an overready supermarket (Calthorpe Centre) available in the town centre, and with the edge-of-centre Bolton Road and Spiceball schemes being master-planned or consented specifically around Waitrose's needs, it is wholly unreasonable for Waitrose to now state that they will only come to Banbury if they can have consent for the far-edge-of-centre / out-of-town Southam Road site instead. This application clearly fails the sequential test and must be refused for that reason.

3. Consultations

3.1 Banbury Town Council: objects to the application and make the following comments -

Banbury Town Council are pleased to see Waitrose expressing a desire to have a store in the town, however, the Council wishes to OBJECT to this application for a number of reasons. With a large store such as Waitrose coming to the town there is huge potential for the store to help support the town centre and attract shoppers to the town from the wider area, however, it is felt that the current location is not suitable.

Impact on the Town Centre:

The Town Council is concerned that the proposed location of the site will have an adverse impact on the vitality of the Town Centre. Local and National Planning Policies suggest that local authorities should support the viability and vitality of town centres. It is not considered that this site will support the town centre as its location and parking facilities are too far removed from the centre itself. The town centre is already being impacted by a number of large out of town retail units such as the Banbury Cross Retail Park and the Banbury Gateway development. The impact of the Gateway development is yet to come but it is anticipated that there will be a draw away from the town centre, especially with no charge for car parking. Any future development outside of the town centre will have a significant negative impact.

The Sequential Test, considers alternative sites for development, and is contained within the

application. The test attempts to address seven alternative sites, including; Bolton Road, Castle Quay 2, and Calthorpe Centre. The Test concludes that the available town centre sites are not viable or suitable to Waitrose. The Town Council would argue that the results of the Sequential Test do not adequately deal with the options for alternative development sites and that further consideration be given to the Bolton Road and Castle Quay 2 sites. It is strongly felt that these sites should be prioritised over the development of a store at Southam Road.

Whilst the Castle Quay 2 site has been dismissed by Waitrose as not being big enough (22,000 sq ft net sales – compared to their proposed 29,000 sq ft net sales), Banbury Town Council strongly feels that this site is of an adequate size for their needs. The application for Castle Quay 2 was strongly based upon having a Waitrose as the anchor store and without their investment at this site the development could be undermined.

The Bolton Road site was once considered for a Waitrose store by Cherwell District Council as part of its SPD for the redevelopment of the Bolton Road area. The 2011 draft SPD identified that there would be an anchor food store in the region of 66,000 sq ft gross as well as other retail units and a Replacement car park (minimum 630 spaces). The Sequential Test dismisses this site as an option due to the nature of its mixed ownership and the 'medium to long term site assembly issues'. The Town Council feels that this site would provide the food store that Waitrose desires whilst also supporting the development and vitality of the old town.

Banbury Town Council supports Banbury Civic Society's view that, with a potential "supermarket (Calthorpe Centre) available in the town centre, and with the edge-of-centre Bolton Road and Spiceball schemes being master-planned or consented specifically around Waitrose's needs, it is wholly unreasonable for Waitrose to now state that they will only come to Banbury if they can have consent for the far-edge-of-centre / out-of-town Southam Road site instead. This application clearly fails the sequential test and must be refused for that reason".

Impact on Traffic:

The Town Council is extremely concerned about the adverse impact this application will have on the amount of traffic on the Southam Road. This road is already considered to be extremely congested, especially during peak times and the development of a Waitrose at this site will only exacerbate an already congested road.

The Town Council has objected to previous planning applications over concerns about the traffic and congestion on the Southam Road. In particular, the Town Council objected to Application 10/01347/F (4 storey Premier Inn, part 2 storey, part 1 storey Beefeater Restaurant, car parking, access, access over stream) on the grounds that the amount of traffic resulting from the development onto an already congested road would cause further traffic problems at peak times. Further, the Council raised their concerns over the difficulty motorists have exiting Marley Way onto the Southam Road and a busy junction on the opposite side of this road would be both dangerous and cause further congestion. It was requested that if development was to take place at this site, consideration should be given to the installation of a roundabout, which would help keep traffic moving. The application was subsequently refused on the grounds that the development of a hotel and restaurant at this out of town centre location did not accord with the national policy imperative to direct uses of this kind to locate in established town centre's where they can be easily accessible

The Town Council would like to support Oxfordshire County Council in stating that the proposals do not demonstrate safe and suitable access to the site for all people (NPPF) and that the proposals do not fully demonstrate that traffic arising from the site can be accommodated safely and efficiently on the transport network, contrary to Policy SD1 of Oxfordshire Local Transport Plan 3 and the National Planning Policy Framework. Further, the Town Council would like to draw attention to OCC's LTP4 documentation which tries to discourage

using the centralised routes and the inner relief road route (Windsor Street/Cherwell Street/Concorde Avenue/Hennef Way). Any development on this site will encourage the use of this route and add to the congestion.

OCC state that “there is only minimal public transport currently available along the Southam Road, consisting of very infrequent interurban services from Leamington Spa and Cropredy (but not in the opposite direction), and off-peak journeys on the Council’s financially supported route B10 to/from Hanwell Fields. Bus service B10 currently operates once per hour, Mondays to Saturdays between 0830 and 1630 approximately (into Banbury) and from 0915 to 1645 (from Banbury). Bus services 277 operates along the Southam Road inbound only, twice per day. The future of county council subsidies to both services cannot be guaranteed”. Banbury Town Council would argue that, as the site is not adequately served by public transport, the alternative town centre sites should be prioritised.

Banbury Town Council would like to reiterate that it would be happy to see Waitrose in the town, but due to the reasons detailed, it regrettably has to object to this application.

to all modes of transport and can also increase trips to complementary service, cultural and retail uses in those centres. The Town Council would like to reiterate their concerns previously made for this site.

3.2 **Planning Policy comments**

The application site is identified as an existing employment site in the new Local Plan (2011-2031) (Banbury policies map 5.3). Policy SLE1 seeks to retain existing employment sites unless the following criteria are met:

- the applicant can demonstrate that an employment use should not be retained, including showing the site has been marketed and has been vacant in the long term
- the applicant can demonstrate that there are valid reasons why the use of the site for the existing or another employment use is not economically viable
- the applicant can demonstrate that the proposal would not have the effect of limiting the amount of land available for employment.

The policy states that regard will be had to whether the present employment activity has an unacceptable adverse impact on adjacent residential uses and, to whether the applicant can demonstrate that there are other planning objectives that would outweigh the value of retaining the site in an employment use. The policy seeks focus employment development on existing employment sites.

The applicant’s planning statement states (para. 5.12), “*The applicant does not seek to demonstrate that any of these criteria [then in draft] are satisfied. Rather the extent of tension with the criteria attached to emerging Policy SLE1, and the underlying intent of paragraph 22 of the Framework should be placed into the planning balance that is required by the approach set out in the second bullet point of paragraph 14 of the Framework.*”

The Plan has since been adopted and must now be given full weight as part of the statutory Development Plan. The Plan, including policy SLE1, have been prepared having regard to the NPPF including paragraphs 22 and 14.

The application should therefore be supported by information that assists detailed consideration of the proposals in light of policy SLE1.

Local Plan paragraph B.48 which supports SLE1 states that the provision or the loss of jobs will be a material consideration for determining proposals for any use classes. The supporting statement (para. 5.13) states that the provision of the foodstore would result in the provision of some 200 new jobs with provision for staff training and an emphasis upon local recruitment. It also states the capital receipt from site disposal would be re-invested in the factory (a major local employer) and that the proposed development would not harm the 'industrial processes undertaken on the retained land'. The application is described as being 'redundant' (para's. 1.2 & 2.9). On this basis, the provision of some 200 additional jobs is a significant consideration but does not negate the need to consider the criteria in SLE1.

Policy SLE2 states that retail development will be directed towards Banbury town centre and the Council will require a sequential test and an impact assessment in accordance with requirements in the NPPF and PPG. The policy requires that proposals not in town centres should be in edge of centre locations. Only if suitable sites are not available in edge of centre locations should out of centre sites be considered and that when considering edge of centre and out of centre proposals, preference will be given to accessible sites that are well connected to the town centre.

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- i. Land at Banbury Canalside (Local Plan policy Banbury 1)
- ii. Land at Bolton Road (policy Banbury 8)
- iii. Land at Spiceball (policy Banbury 9)
- iv. Land at Calthorpe Street (paragraph C.158)
- v. George Street Car Park

It was also advised that a sequential test, in this case, need not extend beyond Banbury and that a retail impact assessment would be required.

Sequential Test

- i. Policy Banbury 1 - Banbury Canalside allows for residential, commercial and town centre uses in the northern part of the allocated site. The policy also states that there should not be any significant convenience retail on the site. Policy Banbury 7 states that main town centre uses will be supported in

Banbury town centre and identifies an 'area of search' for an extension to the town centre which will be explored in Local Plan Part 2.

The submitted sequential test considers two parts of the Canalside site closest to the existing town centre. It states, "*Neither site is considered a suitable site for Waitrose. Site A forms part of the Council's wider Canalside allocated site and should form part of that comprehensive redevelopment, it is also currently occupied and appears to be vibrant and healthy. Site A is far too small to accommodate even a part of the proposed development and would only appeal to much smaller independent retail outlets and has aspirations to remain as public open space.*"

As the policy seeks to avoid significant convenience retail in this location, it is accepted that it could not accommodate the proposed development under this restriction.

ii. Policy Banbury 8 sets out how land at Bolton Road will be redeveloped for town centre uses including small scale A1 and A3 uses, ancillary residential development and car parking. Paragraph C.167 explains how there is an option for food retailing to be provided on the site.

The sequential test notes, "*The Bolton Road site could potentially accommodate the scale of proposed retail supermarket. The site is presently in multiple ownerships and is occupied by a range of commercial uses and a substantial public car park. The emerging Development Plan indicates Cherwell District Council proposes a residential led scheme, contributing to the vitality and viability of the town centre*" (para. 4.5).

It also states (appendix 1), "*The site is identified to come forward as part of a comprehensive mixed use development adjacent to the Town Centre. The emerging allocation identifies that a variety of commercial uses should come forward on the site. A number of units on the Bolton Road site are occupied, therefore the availability of the site in the short to medium term is questioned. The site also relies of the delivery of a number of different uses (Hotel, Leisure, small scale Retail) to fulfill its policy requirement to be a comprehensive scheme. Accordingly the site is considered neither suitable or available and can therefore be discounted as a suitable site for Waitrose.*"

The Plan was modified in 2014 in deliver a larger residential component on this site with smaller retail units. However, in the view of the Council's land interest in the site and its desire to facilitate redevelopment, it is suggested that further consideration be given to its potential suitability and availability.

iii. Policy Banbury 9 – Spiceball Development Area provides for a mixture of town

centre uses comprising new retail and leisure, a landmark mixed retail and leisure development that supports the growth of the town centre to the north of the Oxford Canal. On 6 February 2014 the Council resolved to grant permission for a retail food store (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) on the site subject to legal agreement.

The potential operator involved in the current application had been an interested party. The sequential test states, "*Waitrose has carefully considered the trading opportunity presented by this site and has concluded that it is not suitable for Waitrose. Waitrose will not undertake investment on this site. The reasons why this site is not acceptable to Waitrose are set out in the correspondence dated 20th May 2015*" (para. 4.3)

"Although the location is acceptable to Waitrose as a matter of principle, being edge of centre, the site does not present the opportunity for a successful

supermarket for Waitrose". The five reasons highlighted in the sequential test are:

"i) The size of the proposed foodstore at 25,000 sq ft net sales is not large enough to enable Waitrose to compete against existing food retailers in Banbury.

ii) The store configuration does not meet Waitrose's model layout; it is too long and thin and does not allow sufficient aisle width and or an acceptable store layout.

iii) The vertical circulation (goods lifts, customer lifts and escalators/travellators) sits within the sales area, further reducing the available selling space and compromising retail layout.

iv) The multi level car parking proposed is not of an acceptable layout and is not suitable for Waitrose customers. Multi level parking is a disincentive as customers find it inconvenient and more difficult to navigate, and so reduces sales and viability.

v) The overall scheme is a complex – multi level mixed use redevelopment of a constrained town centre site that includes a hotel, cinema, restaurants, bars and cafes. Customers are likely to find themselves competing for parking with users of the adjacent leisure centre, as well as users of the other facilities on the site." (para. 4.4)

Whilst this site and the approved scheme is not considered to suitable for Waitrose, its potential suitability for a foodstore, the possibility of an alternative scheme being promoted and the policy certainty brought about by an allocated site should be given consideration.

iv. Land at Calthorpe Street (paragraph C.158). The sequential test concludes *"The opportunity for development of any form to come forward on the site is extremely limited on account of Calthorpe Road dissecting the site Furthermore there is no prospect of the site coming forward in the short to medium term as the existing car parks serve a number of existing users."*

Land at Calthorpe Street has mixed use potential but at present is not given the priority in the Local Plan that has been given to Spiceball and Bolton Road. It is accepted that Calthorpe Street is likely to represent a longer term redevelopment opportunity.

v. George Street Car Park – including large public car park serving the town centre. The sequential test concludes, *"The redevelopment of the site does not present a suitable option, due to the fragmented nature of the sites. Furthermore the various land ownership issues surrounding the sites would require extensive discussion and negotiation, thus meaning that the likelihood of the site coming forward in the short to medium term is extremely unlikely. Considering the above, the sites can be discounted as a suitable site for Waitrose."*

Again, it is accepted that George Street is likely to represent a longer term redevelopment opportunity.

Retail Impact Assessment

With regard to the retail impact assessment, the PPG expects the likely effects of development on any town centre strategy to be considered. The RIA states, *"In relation to planned investment, outline planning permission has been granted for an extension to Banbury town centre, including a foodstore. This permission [note: resolution not permission] was granted without a confirmed foodstore operator. Waitrose has a longstanding aspiration to have a presence in Banbury and therefore considered this site in detail....they concluded it was not feasible for them. Whilst it is understood that the Council as a key*

landowner of the site is keen to facilitate the development, because there has never been any prospect of Waitrose operating a foodstore on that site, the delivery of the proposed foodstore will not impact on this aspiration or investor confidence more widely".

The RIA, goes on to conclude, "...In the event a foodstore comes forward as part of the Spiceball, the cumulative scenario shows that the impact on Banbury town centre will, in net terms be positive". No specific reference is made to the Bolton Road site.

In view of the importance of the Local Plan's policies for Spiceball and Bolton Road in strengthening the town centre to meet recently adopted Local Plan objectives, it is suggested that separate expert advice be sought on both the sequential test and retail impact assessment to ensure that the Plan's and the NPPF objectives for town centres are met.

The proposed development should also comply with Local Plan policy SLE4 which states that all development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Encouragement will be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. The policy explains that development which has a severe traffic impact will not be supported. Policy ESD1 seeks to distribute growth to the most sustainable locations and deliver development that seeks to reduce the need to travel and which encourages sustainable travel options to reduce dependence on private cars.

In conclusion, the application site is outside the town centre in an out of centre location and therefore the proposed development would be inconsistent with the NPPF, the PPG and the policy approach in the Local Plan 2011-2031. There are at least two sequentially preferable sites in the town centre that are considered suitable for a foodstore in principle. Whilst the development would produce a significant number of jobs and assist the wider local economy, the tests of policy SLE1 need to be addressed and it is considered that further expert advice on the conclusions of the sequential test and retail impact assessment should be sought in the interest of meeting Local Plan and NPPF objectives.

It is noted that the proposals would allow for investment in the existing factory, a large and important local employer. It is also noted that the application site, despite being in an out of centre location is relatively close to the town centre and within reasonable walking and cycling distance. A car parking strategy for the site could also be secured. However, in the interests of ensuring that there would not be significant adverse harm to the delivery of Local Plan policies Banbury 7 (Strengthening Banbury Town Centre), Banbury 8 (Bolton Road) and Banbury 9 (Spiceball), it is recommended that further specialist advice be sought.

3.3 Ecology Officer

With regard to the above application the level of ecological information submitted is fine and I would concur with its conclusions. There are no major ecological concerns on site. The recommendations within the Ecological Appraisal to avoid any offences to protected species and for enhancements on site are all broadly appropriate. I would suggest the following conditions therefore (or similar wording):

K21 Construction Environmental Management Plans (CEMP) for Biodiversity

Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a Construction Environmental Management Plan (CEMP), which shall include details of the measures to be taken to ensure that construction works do not adversely affect biodiversity with reference to the recommendations within sections 4.4.2, 4.4.5, 4.4.6, 4.4.10, 4.4.11, 4.4.12, 4.4.13 and 4.4.15 of the submitted Ecological Appraisal which was prepared by Peter Brett Associates, dated April 2015, 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 CEMP.
Reason KR2

K17 Biodiversity Enhancement

Prior to the commencement of the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing biodiversity on site, showing types and locations of provisions and planting with reference to sections 4.4.4, 4.4.8, 4.4.9 and appendix D of the submitted Ecological Appraisal which was prepared by Peter Brett Associates, dated April 2015, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.
Reason KR2

3.4 **Thames Water**

Waste Comments

Surface Water Drainage - With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of groundwater. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required.

There are public sewers crossing or close to your development. In order to protect public sewers and to ensure that Thames Water can gain access to those sewers for future repair and maintenance, approval should be sought from Thames Water where the erection of a building or an extension to a building or underpinning work would be over the line of, or would come within 3 metres of, a public sewer. Thames Water will usually refuse such approval in respect of the construction of new buildings, but approval may be granted in some cases for extensions to existing buildings.

Thames Water would advise that with regard Thames Water would advise that with regard to sewerage infrastructure capacity, we would not have any objection to the above planning application.

'We would expect the developer to demonstrate what measures he will undertake to minimise groundwater discharges into the public sewer. Groundwater discharges typically result from construction site dewatering, deep excavations, basement infiltration, borehole installation, testing and site remediation. Any discharge made without a permit is deemed illegal and may

result in prosecution under the provisions of the Water Industry Act 1991. Should the Local Planning Authority be minded to approve the planning application, Thames Water would like the following informative attached to the planning permission: "A Groundwater Risk Management Permit from Thames Water will be required for discharging groundwater into a public sewer. Any discharge made without a permit is deemed illegal and may result in prosecution under the provisions of the Water Industry Act 1991. We would expect the developer to demonstrate what measures he will undertake to minimise groundwater discharges into the public sewer. Permit enquiries should be directed to Thames Water's Risk Management Team by telephoning 02035779483 or by emailing wwriskmanagement@thameswater.co.uk. Application forms should be completed on line via www.thameswater.co.uk/wastewaterquality."

Thames Water would recommend that petrol / oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of petrol / oil interceptors could result in oil-polluted discharges entering local watercourses.

Water Comments

On the basis of information provided, Thames Water would advise that with regard to water infrastructure capacity, we would not have any objection to the above planning application.

Thames Water recommend the following informative be attached to this planning permission.

Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Water's pipes. The developer should take account of this minimum pressure in the design of the proposed development

3.5 **Environment Agency:**

We have no objection to the application as submitted, subject to the inclusion of a condition, detailed under the heading below, to any subsequent planning permission granted.

Without the inclusion of this condition we consider the development to pose an unacceptable risk to the Environment

Condition

If, during development, contamination 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 a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reasons

To ensure that any unexpected contamination encountered during the developments is suitable assessed and dealt with, such that it does not pose a unacceptable risk to ground or surface water.

3.6 **Oxfordshire County Council Consultees**

Attached as appendix 2 is the full Single Response from the County Council covering their initial transport comments; and drainage comments.

Since that time further negotiations have been held which have resulted in revised plans that overcome concerns about the safety of the main vehicular access, provide alternative cycle path arrangements across this entrance and has reached some measure of agreement on infrastructure contribution matters, albeit that there is still some difference with regards to some elements of the legal agreement south and the form of pedestrian crossing needed on Southam Road

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

4.1 **Development Plan Policy**

Cherwell Local Plan 2011- 2031 – part 1

Policy SLE1 (Employment)
Policy SLE2 (Securing Dynamic Town Centres)
Policy SLE4 (Improved Transport and Connections)
Policy ESD1 (Mitigating and Adapting to Climate Change)
Policy ESD 1 (Mitigating and Adapting to Climate Change)
Policy ESD 2 (Energy Hierarchy and Allowable Solutions)
Policy ESD 3 (Sustainable Construction)
Policy ESD 4 (Decentralised Energy Systems)
Policy ESD 5 (Renewable Energy)
Policy ESD 7 (Sustainable Drainage Systems)
Policy ESD 15 (The Character of the Built and Historic Environment)
Policy Banbury 7 (Strengthening Banbury Town Centre)

The following policies are indirectly relevant

Policy Banbury 1 (Banbury Canalside)
Policy Banbury 8 (Bolton Road Development Area)
Policy Banbury 9 (Banbury Spiceball Development Area)

Adopted Cherwell Local Plan (Saved Policies)

C28 Layout, design and external appearance of new development
C30 Design of new residential development

4.2 **Other Material Policy and Guidance**

National Planning Policy Framework

Paragraph 19 of the NPPF states that *'Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system. LPA's should promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas...*

Paragraph 23 of the NPPF states that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality; Paragraphs 24 to 27 of the NPPF set out a requirement for a sequential test and impact assessment.

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.

Paragraph 27 states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.

Planning Practice Guidance

The PPG makes clear

- the sequential test should be considered first as this may identify that there are preferable sites in town centres for accommodating main town centre uses (and therefore avoid the need to undertake the impact test)
- the sequential approach requires a thorough assessment of the suitability, viability and availability of locations for main town centre uses. It requires clearly explained reasoning if more central opportunities to locate main town centre uses are rejected.

5. Appraisal

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

Planning History
Principle of Development
Retail planning assessment
Design and Impact on the Character of the Area
Parking and Highway Safety
Ecology and Landscaping

Planning History

5.2 In November 2001 planning permission was granted for two-storey offices on this site, with a new HGV access and gatehouse That permission was renewed in 2006

5.3 In March 2009 outline planning permission was granted for 12 commercial units for B1,B2 and B8 uses with a new access to Southam Road. The access proposed included a right turn facility similar to that now proposed.

- 5.4 In March 2012 an outline application was submitted for a foodstore (with 5,574 sq. metres floorspace) and up to 7,432 sq.metres of non-food retail floorspace and a new petrol filling station. That application was subsequently withdrawn

Principle of Development

- 5.5 As noted in the Planning Policy Officers comments quoted at para 3.3 above the site is an existing employment site which Policy SLE1 of the Cherwell Local Plan (2011-2031) seeks to retain in employment use. The applicant seeks to suggest that Policy SLE1 is in tension with paragraph 22 of the NPPF which states that
Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.
- 5.6 The land is surplus to the requirement of the owners and their operation will not be hindered by this development, and to the contrary the applicants indicate that the capital released from the sale of the site will be invested in the Banbury factory facilities and its operational capacity. This will assist in the future well-being of this factory and thereby aid the protection of the 700 jobs
- 5.7 The land has been available for a substantial period and has been marketed.
- 5.8 In paragraph B.48 (part of the supporting text that explains Policy SLE1) notes that the provision or the loss of jobs will be a material consideration in the determination of proposals for any use class. The applicants indicate that 200 jobs will be created by this development , and this is therefore a significant consideration. On balance your officers consider that this proposal is acceptable in employment policy terms

Retail Planning Assessment

- 5.9 The planning application is accompanied by a retail impact assessment and a sequential analysis of alternative sites. The Council engaged planning consultants DPDS to provide expert analysis of the submissions. Their conclusions are re-produced below
- 5.1 The site is in an out of centre location and under both national and local policy should be determined according to the sequential and impact tests.*
- 5.2 In relation to the sequential test, most of the sites considered by the applicants can be ruled out as not available. We consider that the applicant has not assessed the Bolton Road site correctly and should have considered the ownerships separately rather than rejecting it as in multiple ownership and therefore not available. The multi-story car park site, in Council ownership, should have been assessed on its own but we have concluded that in the absence of any clear steps to bring the site forward for redevelopment, it would be difficult to demonstrate that it could be available as an alternative.*

5.3 The Spiceball site is a town centre site with a resolution to grant planning permission a mixed use scheme including a foodstore. The site is vacant and clearly available. Under the Dundee judgement, a site's suitability has to be judged according to whether it is suitable to accommodate the development applied for but applicants are expected to demonstrate flexibility. Waitrose puts forward reasons why it is unsuitable for it. It claims that the site would not give the weekly sales to make it viable and cites several reasons it is unsuitable. In relation to weekly sales figures, there is no evidence submitted to support the contention. Although Waitrose cites confidentiality as the reason of the lack of evidence, the Council should not rely on this assertion without any evidence and it is, on the face of it, difficult to see why the weekly sales figures would be so different from a nearby site. Although Waitrose claims that the Spiceball site is a complex urban site in a mixed development, this does not appear to be correct, at least in relation to the application scheme. The foodstore is separated from the rest of the development, would operate as a freestanding foodstore and benefits from the same good vehicular access as the Castle Quays Shopping Centre

5.4 We conclude that the applicant has not demonstrated sufficient flexibility to pass the sequential test. The onus is on the applicant to demonstrate that the site is not suitable and we suggest that applicant is invited to submit further information on this matter. Both paragraph 27 of the NPPF and the NPPG indicates that development should be refused unless the sequential test is passed, and the NPPG suggests that there is no need to consider the impact test unless the sequential test is first passed.

5.5 The impact test as set out the NPPF has two parts – the impact on existing, committed and planned investment and the impact on the vitality and viability of the centre. In relation to the impact on planned investment, the key consideration is the impact on the planned development of the Spiceball site. We are advised that the majority of the development is being progressed in advance of the foodstore site and will go ahead whatever the decision on this application. In relation to the remainder of the development, the available evidence suggests that Waitrose would not go to the development if planning permission is refused on the Southam Rd site. It is also not clear that Waitrose is the only possible operator for the foodstore. We conclude that the evidence that the proposal would have an adverse impact on investment is not strong.

5.6 In relation to the impact on the vitality and viability of the town centre we conclude that the solus impact would not be sufficient to amount to a significant adverse impact. This arises from the size of the town centre turnover, derived mostly from comparison goods sales, and the fact a large proportion of the impact would fall on the large food stores which are out of centre.

5.7 In relation to the cumulative impact of the proposal together with other relevant permissions, the town centre is will shortly experience a substantial change with the opening of the Banbury Gateway development. The cumulative impact assessment is deficient in not assessing the diversion of comparison goods sales from the town centre and its impact. It also fails to explain the source of the figures and the calculations undertaken. Substantial revision to the impact assessment would be needed before it could be assessed let alone relied on. However, the current application would have only limited additional impact and it would be unreasonable to refuse planning permission on the basis of cumulative impact, if the development in question would make such limited contribution to the

cumulative impact. The argument is likely to go other way – that if the much larger impact of the Banbury Gateway development was acceptable, the Council is being inconsistent if it refuses the current application. The Council may therefore consider it unnecessary to ask for work on cumulative impact if it accepts this line of reasoning.

5.8 We therefore conclude that the proposed development is unlikely to have a significant adverse impact on Banbury town centre, or any other centre.

- 5.10 In response to this the applicants have responded by letter dated 22 October which is attached as Appendix 3. In summary it will be seen that they claim that it is self-evident that the Waitrose proposal will not fit on the Spiceball site. They quote at length from a recent appeal case, and attach a letter from Waitrose which gives detailed opinions what they see as the deficiencies of the CQ2 site (Appendix 4)
- 5.11 To complete the advice that is available to the Committee DPDS has been asked to advise us further, and their letter dated 3 November is attached as Appendix 5.
- 5.12 As can be seen from the above the analysis relates to three separate areas of consideration,
i) the solus and cumulative impact of the proposal upon the town centre
ii) the sequential test
iii) the impact upon investment
I address each of these considerations below
- 5.13 DPDS's advice on the retail impact of this store alone upon the town centre is straight forward. Because the town centre has only a very limited offer of large scale food retailing the extent of trade diversion will be small and not significant, and could not reasonably represent a reason for refusal. The issue of cumulative impact is more difficult to reach conclusions upon, especially given the newness of the Banbury Gateway scheme (which only started opening at the end of October) and which may currently be experiencing abnormal trading due to it being incomplete, a novelty, and in the pre-Xmas boom in trade. It is obviously too early to be able to have any empirical evidence of impact upon the town centre. DPDS say
The main part of the cumulative impact would derive from the Banbury Cross (sic should refer to Gateway) development and the Council could not reasonably allow that proposal and then object to a later application on the basis of a very much smaller impact even taking into account cumulative effects
Consequently your officers conclude that the proposal should not be resisted on impact upon trading grounds
- 5.14 With regards to the sequential test DPDS remind us that the flexibility that should be required of retailers remains a matter of judgement which the Council has to make. They point out that Waitrose has itemised eleven deficiencies in the Spiceball (CQ2) site from their point of view. They say that in their view none of these on their own would be sufficient to rule out the site, albeit that some, including size, come close . However they say that it is clear that the scheme as a whole falls considerably short of what Waitrose is looking for. Their conclusion is that it would be requiring too much flexibility from Waitrose

to choose the Spiceball scheme, and that in their view it does demonstrate that the Spiceball site is unsuitable for this operator. In terms of any other options only the Bolton Road site had any other unanswered questions. As there is not a clear timetable and project for this site DPDS consider that little weight could be given to that site in sequential test terms. Consequently they consider that the applicant has passed the sequential test. Your officers see no reason to disagree with that conclusion

- 5.15 Finally the Council needs to give consideration to whether the development would impact upon any planned investment in the town centre, especially having regards to the objection received on behalf of Aberdeen Asset Management and their interests in Castle Quay shopping centre and the proposed CQ2 development. From discussions with them the Council is aware that they are contemplating bringing the scheme forward in two phases, with the foodstore to follow as the second phase. Policy Banbury 9 effectively allows for this and states

A comprehensive approach to site planning and delivery is preferred with proposals for the whole site being accompanied by a detailed masterplan. A phased approach may be permitted provided it can be clearly demonstrated that proposals will contribute towards the creation of a single integrated and coherent development. In order to achieve continuity in design and delivery of the vision, a small-scale, piecemeal approach would not be appropriate.

The implementation of the first phase alone initially, and the delay in the bringing forward of the second phase for a foodstore, is therefore acknowledged and understood. Notwithstanding Waitrose's reservations about the adequacies of the superstore (as shown on the illustrative drawings accompanying the outline application) for their operation, your officers consider that it remains a suitable site which other operators, with different site requirements, will find attractive to operate from.

- 5.16 Overall therefore the proposal is considered acceptable in retail planning terms.

Design and Impact on the Character of the Area

- 5.17 The proposal is for a simple rectangular single storey flat roofed building located on the southern half of the site. It will be set back 12-15 metres from the Southam Road frontage and will have its main customer entrance on the northeast corner facing towards the car park to the north. The building will be 7 metres high, with an elevation length of 60metres to the road and 68 metres frontage to its car park. In materials terms it is intended to be predominantly a metallic silver cladding over a brick plinth on three sides with a Cotswold Stone feature at either end of the principle elevation facing towards the car park which will also include plenty of fenestration. That stone feature will wrap around onto the Southam Road frontage by the main entrance. It will have a crisp modern appearance and this is considered to be entirely acceptable in this streetscene which is made up of car showrooms and large unit retail stores.

Parking and Highway Safety

- 5.18 220 car parking spaces are proposed, which is considered appropriate for a store of this size. Cycle parking provision is also made. Servicing will take place to the rear of the building off a separate access to Southam Road. The service area is adequate to serve its purpose.
- 5.19 The customer vehicular access to the site has been the subject of much discussion between the applicant's highway consultants and the County Council. In particular it has focussed on the safety of the proposed right turn facility for southbound vehicles turning into the site and its proximity to the junction of Southam Road with Marley Way. The County Council has now accepted the access arrangements following the submission of amended plans. Notwithstanding the comments of the Town Council the County Council, as highway authority, has not raised objection on grounds of the adequacy of the network to accept more traffic
- 5.20 Initial concerns about creating a safe arrangement for cyclists to pass across the customer car park access have also now been overcome by amended plans setting the crossing point back from the junction and giving the cyclists priority across a raised table. A pedestrian crossing facility on Southam Road is required. The County Council are seeking this to be a traffic light controlled crossing.
- 5.21 It is understood that OCC have been withdrawn its request for a strategic contribution for highway improvements and has recently clarified its position on the need for contributions towards the establishment of a bus service. A verbal update on this will be given at Committee. Other contributions sought by the County Council have been agreed and will need securing via a Section 106 agreement

Ecology and landscaping

- 5.22 There are no major ecological concerns on site
- 5.23 The application is accompanied by a drawing showing appropriate measures for the protection of the trees that are to be retained both on the site and adjacent. A number of trees will be felled towards the southern end of the site along the Southam Road frontage, to enable the construction of the building, although a number of others will be retained.. A further group of trees will require removal to facilitate the formation of the car park and its entrance to Southam Road. No adverse comments to this degree of tree removal has been received. Submitted landscape plans show 22 new trees are proposed to be planted

Consultation with Applicant

- 5.24 Pre-application submission had been made and commented upon. Discussions have been on-going with OCC re access and related matters.

6. Recommendation

Approval subject to

- (i) The applicant first entering a legal agreement with OCC re transportation infrastructure**
- (ii) the following conditions**

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
[Reason AR2](#)
2. Except where otherwise stipulated by condition, the development shall be carried out strictly in accordance with the following plans and documents: Application forms Design and Access Statement and other documents and drawings listed in the agents letter dated 8 May 2015 and supplemented by plans received accompanying agents e-mail dated 13 November
[Reason AR4](#)
3. Prior to the commencement of the development hereby approved, a schedule of materials and finishes for the external walls and roof(s) of the development hereby approved 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 schedule.
[Reason BR1](#)
4. Prior to the commencement of the development hereby approved, a stone sample panel (minimum 1m² in size) shall be constructed on site in natural ironstone which shall be inspected and approved in writing by the Local Planning Authority. Thereafter, the appropriate external walls of the development shall be laid, dressed, coursed and pointed in strict accordance with the approved stone sample panel.
[Reason BR2](#)
5. Prior to their first use the external lighting shall be carried out and retained in accordance with the details shown on drawing 14-0275/E/001 11 submitted with the application.
[Reason BR1](#)
6. Prior to the commencement of the development hereby approved, a plan showing full details of the finished floor levels in relation to existing ground levels on the site for the proposed building and car park 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 finished floor levels plan.
Reason BR5
7. Prior to the commencement of the development hereby approved, full details of the enclosures along all boundaries of the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved means of enclosure, shall be erected prior to the first use of the building.
[Reason BR7](#)
8. Prior to the commencement of the development hereby approved, full details of

the refuse bin storage for the site, including location and compound enclosure details, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first use of the building, the refuse bin storage area shall be provided in accordance with the approved details and retained unobstructed except for the storage of refuse bins.

[Reason BR1](#)

9. All planting, seeding or turfing comprised in the details of landscaping shown on drawings 5419/ASP4 -1 and 2 shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.

[Reason CR1](#)

10. Prior to the commencement of the development hereby approved, an Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions 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 CR2](#)

11. 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 CR1](#)

12. Prior to the commencement of the development hereby approved, the proposed means of access between the land and the highway shall be formed, laid out and constructed strictly in accordance with Oxfordshire County Council's specification and guidance.

[Reason DR1](#)

13. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.

[Reason DR1](#)

14. Prior to the commencement of the development hereby approved, full specification details (including construction, surfacing and drainage) of the 220 parking spaces within the curtilage of the site, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Thereafter, and prior to the first occupation of the development, the turning area and car parking spaces shall be constructed in accordance with the approved details and shall be retained for the parking and manoeuvring of vehicles at all times thereafter.
[Reason DR3](#)
15. Prior to the first use or occupation of the development hereby permitted, covered cycle parking facilities shall be provided on the site in accordance with details which shall be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter, the covered cycle parking facilities shall be permanently retained and maintained for the parking of cycles in connection with the development.
[Reason DR4](#)
16. Prior to the first occupation of the development hereby approved, a Travel Plan, prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.
[Reason DR4](#)
17. 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 and in general accord with the PBA drawings 26004-2001-002C and 004C submitted with the application . 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 ER1](#)
18. If, during development, contamination 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 a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
Reason
To ensure that any unexpected contamination encountered during the developments is suitable assessed and dealt with, such that it does not pose a unacceptable risk to ground or surface water
19. Prior to the commencement of the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing

biodiversity on site, showing types and locations of provisions and planting with reference to sections 4.4.4, 4.4.8, 4.4.9 and appendix D of the submitted Ecological Appraisal which was prepared by Peter Brett Associates, dated April 2015, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

[Reason KR2](#)

20. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a Construction Environmental Management Plan (CEMP), which shall include details of the measures to be taken to ensure that construction works do not adversely affect biodiversity with reference to the recommendations within sections 4.4.2, 4.4.5, 4.4.6, 4.4.10, 4.4.11, 4.4.12, 4.4.13 and 4.4.15 of the submitted Ecological Appraisal which was prepared by Peter Brett Associates, dated April 2015, 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 CEMP

[Reason KR2](#)

21. All buildings hereby approved shall be constructed to at least a BREEAM 'Very Good' standard.

[Reason LR7](#)

Planning Notes

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

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 in a timely and efficient way.