

Former Burgess Building
Canal Street
Banbury
OX16 5AX

14/01685/F

Case Officer: Emily Shaw **Ward(s):** Banbury Grimsbury And Hightown

Applicant: Swan Directors SIPP

Ward Member(s): Cllr Andrew Beere , Cllr Claire Bell , Cllr Shaida Hussain

Proposal: Demolition and replacement of existing building with six new build commercial units

Committee Date: 9 June 2016 **Recommendation:** Refuse

Committee Referral Major Application

1. Application Site and Locality

- 1.1 The application site is located within Banbury, to the west of the town centre. The site comprises the Former Burgess Building, which most recently was used by an agricultural business (Burgess) for commercial storage and office space. Previous to the commercial storage use the building was a former steam engine works (Barrows and Carmichael). The building has stood on this site for approximately 150-200 years and has been empty in recent years. The building consists of two single storey sections, with a double pitched roof. The building is constructed from brick and a slate roof. The brick elevations remain in-situ however the building is currently in a poor condition with sections of the roof having collapsed. Vehicle access to the site is achieved from Canal Street to the north between two neighbouring buildings to the north.
- 1.2 The site lies immediately adjacent to the Oxford Canal and lies within the Canal Conservation Area. The building is also identified as a 'locally listed building' with the following description:

"Former Cherwell Iron Works. 1861 with additions. Local Liassic brick with timber-trussed Welsh slate roof and iron framed windows. Two ranges (1 east-west and one north south) on single storey workshop buildings. Former works of Barrows and Carmichael. The best-preserved surviving monument to Banbury's once-prolific engineering industry. Employed 200 by the early 1870s, producing traction engines, threshing machinery, elevators and steam cultivation machinery."
- 1.3 The site lies within an area of flood risk. The majority of the site lies within Flood Zone 2, this is an area of land which has a medium probability (between 1 in 100 and 1 in 1000 annual probability) of flooding. Some parts of the site to the north and east lie within Flood Zone 3, this is an area of land which has a high probability (1 in 100 or greater annual probability) of flooding.
- 1.4 The tow path to the eastern side of the canal is a public footpath.

2. Description of Proposed Development

- 2.1 This application seeks planning permission for the demolition of the existing building and structures on the site and the erection of a new single storey building comprising 6 B2 (General Industrial use) commercial units. The application proposes siting the new building further south within the site than the location of the existing building, in an L-shaped form following the boundary with the canal to the east and the southern boundary. The scheme will utilise the existing vehicle access to the site and also proposes 35 parking spaces and turning space to the north and west of the proposed building.
- 2.2 The proposed new building is to be constructed from red brick with a blue brick band course and detailing around the openings. The roof will be finished in natural slate and the windows will be timber painted.
- 2.3 Various documents have been submitted in support of the application, seeking to demonstrate why it is not viable to retain and convert the existing building.
- Planning and Heritage Statement – including structural survey and conversion and new build costs. Submitted August 2015
 - Supporting Statement – including further conversion and new build costs and phasing and flood mitigation measures. Submitted January 2016
 - Annotated drawings illustrating demolition and rebuilding works likely to be necessary in a scheme for conversion. Submitted April 2016

3. Relevant Planning History

<u>App Ref</u>	<u>Description</u>	<u>Status</u>
12/01401/CAC	Demolition of building	REF

The above application for conservation area consent was refused on the 9th January 2013. The reasons for refusal were as follows:

- 1 The loss of the building, which forms an integral part of the industrial heritage of the canal side area, and which positively contributes to the character and appearance of the Conservation Area, is not justified and would be detrimental to the Conservation Area contrary to Government Guidance contained within the National Planning Policy Framework, Policy BE6 of the South East Plan and Policy C23 of the adopted Cherwell Local Plan.
- 2 The loss of the building without a clear proposal for the redevelopment of the site will cause harm to the character and appearance of the Conservation Area contrary to Government Guidance contained within the National Planning Policy Framework, Policy BE6 of the South East Plan and Policy C23 of the adopted Cherwell Local Plan.

4. Response to Publicity

- 4.1 The application has been publicised in the paper and by the display of a notice at the site. The following comments have been received in response:
- 4.2 Objection – 49 comments raising opposition to the proposal have been received, including 1 letter of objection from the chairman of the National Traction Engine Trust, and 1 letter of objection from the Victorian society. The concerns raised are summarised as follows:
- *The building is important in representing Banbury's historic engineering past as many of the previous canal side buildings have already been demolished. This position has not changed since the previous application for conservation area consent was refused. The building should be retained.*
 - *The buildings are still of great historic interest, with nothing comparable left in Banbury town. Their loss would remove what is important to the canal-side heritage and environment.*
 - *The building is in a conservation area and should be retained due to its important contribution within the conservation area.*
 - *Demolition of this building needs to be supported with suitable evidence which illustrates that there is no likelihood of any individual taking it on as a repair.*
 - *Concerns about how the proposed scheme to demolish the building will revitalise this part of Banbury. The area currently has a large number of small commercial units and many of those are empty.*
 - *The building could be reused and made into a viable and vibrant business area for small businesses.*
 - *The building is a very rare survivor of buildings of this sort nationally. There are perhaps only half a dozen locations like this which exist across the UK at the present time. Elsewhere in the country, in Thetford in Norfolk and Leiston in Suffolk, similar locations are now very successful small scale heritage centres and museums, celebrating the ingenuity of the past and inspiring the engineers of the future and providing a vision of what could be done on Banbury's historic canalside - which these buildings if imaginatively re-used, could enhance no end, instead of becoming a homogenous new development with limited visual and historic appeal.*
 - *The building has features of interest and is typical of an ironworks manufacturing site. It is unfortunate that the building has been allowed to fall into such a state of disrepair. Nevertheless it would be a pity if an original industrial ironworks building were to be lost. Its retention could enhance the canal side and indicate the importance of both canals for transport and the importance of canal side industries which in the case of Banbury is the former Burgess Building. A variety of buildings such as this one would make the area one of interest.*
 - *This is one of the last vestiges of Banbury's once thriving industrial past, and is sited within the Conservation Zone. Surely we should take pride in our industrial heritage, and not allow these buildings to be removed as an 'easy' or cost effective option. Rather we should invest in them, and make them a focus of new industry, and the centrepiece of any attempt to revitalise this area of the town.*

- *This is an opportunity to use the heritage of the town to attract visitors and tourists to the town arriving on the canal.*
- *The reuse of the building will recycle the existing materials.*
- *This area of the canal could provide enhancement to the town of Banbury*
- *Demolition of this building would have a negative effect on Banbury's heritage and history*
- *A restored building which maintains the heritage will offer much more to the town of Banbury and help to regenerate the canalside. Maintaining the heritage will demonstrate the history of engineering in Banbury to the existing community and this building should therefore be celebrated. A sense of identity and heritage gives a sense of pride, which in turn creates hope and added value.*
- *This building is an important local heritage asset within the conservation area which should be protected.*
- *This is a rare survivor of a typical small Victorian engineering works. Given its canal side location, imaginative reuse is a better than demolition for more bland developments.*
- *It is claimed the building is redundant and nonviable. Others have made serious offers to take the building on and to create a courtyard of diverse businesses and studios, using the site's heritage as a selling-point. To demonstrate that a building is redundant, it needs to be shown that nobody else is interested in making good use of it. Others are. Redundancy has thus not been demonstrated.*
- *Granting permission would show that if you neglect a historic building in Cherwell long enough, you will eventually get consent to knock it down. A precedent that says 'neglect pays' cannot possibly be good for Banbury or its historic canal-side.*
- *Communities which benefit from historic waterways and their associated buildings should be optimising them to enhance these areas of the town.*
- *The buildings on this site are a good size and capable of conversion.*
- *This development if approved could set an undesirable precedent for the conversion of run-down buildings within conservation areas.*
- *This area already offers a variety of small commercial units some of which are empty. This building could be converted for an alternative purpose which would revitalise the area.*
- *There is a scarcity of small workshop/business units in Banbury. A sympathetically and comprehensive refurbishment of the building and conversion into small units will prove popular in the market. A refurbished scheme may be more appealing than a new build.*

4.3 Support – 1 letter in support has been received. This argues that: *The building is incapable of being renovated to meet modern standards. The proposed industrial building will meet a growing need for local industry needing small premises in the town centre. The proposed industrial units will be of benefit to the local economy. Comments have raised the important link to the canal, however, the building currently on site does not link into the canal this element has previously been lost.*

5. Response to Consultation

5.1. Banbury Town Council:

Comments dated the 10th March 2016

No objections

Comments dated the 20th April 2015

Object

Cherwell District Council plans to develop Canalside in the future and it seems to me that demolishing any of the few surviving canal side buildings that represent the industrial heritage of Banbury would be counter productive to this intention. As I understand it, the development of canal side is predicated upon the need to introduce vibrancy to an area that formerly had that in spades.

The building is in a fairly parlous state, but could be improved very easily through investment; there is clearly no need to demolish it in order to make it viable.

The heritage this building represents as one of the centres of the steam engine building industry surely outweighs any requirement for modern development, and I would certainly hate to see this building lost to the town.

5.2. Banbury Civic Society: Object

1) Historic Importance and Statutory Protection

Whilst the building is not of great architectural merit, it is of enormous historical importance to the town of Banbury. Its loss would mean the end of Banbury's last substantially intact Victorian steam engine factory and agricultural implement manufactory and the loss of the last substantive reminder of the town's once internationally significant Victorian agricultural engineering industry.

The buildings, previously the Cherwell Iron Works, were built c.1862 in the new industrial suburb of Newlands by Tipton coal-master Thomas Barrows and local engineer and millwright Joseph Kirby, who had been building steam engines and threshing machines in North Bar place from about 1855. The firm, who operated as Kirby & Barrows, Barrows & Carmichael, Barrows & Stewart and Barrows & Co., ceased trading in 1919.

In terms of scale, with some 100 employees, Barrows fell somewhere between Thomas Lampitt's Vulcan Foundry (Neithrop, established 1796) and Bernhard Samuelson's world-famous Britannia Works (established in Newlands in 1839 by James Gardner). These three engineering works were not only the town's largest employer, employing a tenth of the town's working population, but two of them, Barrows and Samuelsons, also famously exported their wares to the four corners of the globe.

Of the three companies, Barrows had the most varied and interesting catalogue, based from 1855 on its pioneering portable steam engines, steam ploughing machinery and threshing machines. Other specialist products included mortar mills, saw benches, street sweepers, water vans and winding and pumping engines for coal mines. The company was wound up after the cessation of urgent contracts for essential war work.

The surviving buildings, which appear to have probably been Barrows' main assembly buildings, fitting shops and stores, are on the Local List for their historical interest as a reminder of lost industry and a now vanished industrial heartland that stretched from Morrisons to Bridge Street. Since 2013 they have also been included within CDCs Oxford Canal Conservation Area, as part of the last small group of industrial buildings on the canal.

It would seem a great pity to lose this last reminder of a lost world to a new-build shed. The Northern Aluminium Company came to Banbury in 1931 because of the town's strategic location and its (then underemployed) high-skilled engineering workforce. If Banbury and Cherwell are to market themselves for the area's high-end engineering prowess, we're missing a trick if we pay no regard to the town's engineering tradition and heritage.

2) Effect on the Character and Appearance of the Oxford Canal Conservation Area

As a locally-listed building, the building is a non-designated heritage asset. As part of the Oxford Canal Conservation Area, the building is part of a wider designated heritage asset. It thus has statutory protection. The building was expressly included within the Oxford Canal Conservation Area when it was designated two years ago because the specialist consultants employed by the council, the council itself and the wider public who were consulted all agreed that, even in its present dilapidated condition, the building contribute positively to the character and appearance of the Oxford Canal corridor. If it did not, it would not have been included in the conservation area. The building also figures prominently in the defined 'Positive Vista' clearly shown on the conservation area mapping of this section of canal, looking north-westward from Tramway bridge.

The building is described at para 7.7.4, whilst para 7.7.1 states:

'The section to the south of Bridge Street is strongly influenced by its industrial past, bounded either side with former industrial buildings, modern warehousing and a mobile home park. However, the area between the west bank of the canal and Lower Cherwell Street retains greater historical and architectural interest than the previous section, due to the lack of modern development.'

*The proposed development proposes to replace a genuinely historic and distinctive Victorian engineering works with a pastiche warehouse type building. At para 6.95 the Conservation Area Appraisal states **'Redevelopment of the southern (Banbury) section should be aimed at revitalising the area. However, careful high-quality design solutions would be required to prevent pastiche or warehouse-type structures which are often typical of redeveloped waterfronts.'***

Even without subjective opinions as the relative merits of former industrial buildings and the manner in which they contribute the historic character of canals, it is clear from the Council's own Oxford Canal Conservation Area Appraisal (an adopted Supplementary Planning Document) that replacing this locally listed building with a 'pastiche or warehouse-type structure' would be both inappropriate and harmful to the canal's established historic character.

*The proposal is thus contrary to **paras. 130 and 131** of the NPPF, as well as **paras 132, 134 and 137** (Impact on Designated Heritage Asset (Conservation Area)) and **para 135** (Impact on Un-Designated Heritage Asset (Locally Listed Building)). If the planning authority permits loss without 'taking all reasonable steps to ensure the new development will proceed after the loss has occurred', it would also be contrary to **para 136**. The proposal is also contrary to **Policy ESD 16 and ESD 17** of the Cherwell Local Plan 2031 ('The Character of the Built and Historic Environment' and 'The Oxford Canal').*

3) Failure to Demonstrate Redundancy

Given that it is agreed that the building is of historic interest and that does, or could contribute positively to the character / appearance of the Oxford Canal Conservation Area, there would need to be very good reasons for consenting to its loss.

*While the building has been allowed to fall into disrepair through wonton neglect by its former owners (British Waterways / Canal & River Trust), the NPPF is abundantly clear (para 130) that: **'Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.'** The manner in which British Waterways failed to market the building for sale or rent for over a decade, their lack of maintenance to it and their (refused) application to demolish only two years ago, all indicate a deliberate act of neglect. The applicants are not culpable for the building's decline, but they purchased the site knowing that consent to demolish had just been refused would be unlikely to be forthcoming in future.*

*It is claimed by the applicant's agent that the building is redundant and no longer has a viable use. National Planning Policy Guidance (NPPG) is unambiguous in its explicit interpretation of the NPPF: under **'What evidence is needed to demonstrate that there is no viable use?'** it states **'Appropriate marketing is required to demonstrate the redundancy of a heritage asset. The aim of such marketing is to reach all potential buyers who may be willing to find a use for the site that still provides for its conservation to some degree. If such a purchaser comes forward, there is no obligation to sell to them, but redundancy will not have been demonstrated.'***

Having decided that, following purchase, they now consider the building to be have no viable use, the applicants need to demonstrate once again that the building is redundant. To do so, the applicants need to demonstrate that there is nobody else who is 'willing to find a use for the site that still provides for its conservation to some degree'. To do so, they would at the very least need to include an offer of the building or site to the local businessman who they narrowly outbid, at the price he offered, but they would really need to offer the building or site once again on the open market. This process has not happened, so, for the second time in two years redundancy has not been demonstrated.

The applicants bought this site with their eyes wide open. If they are unwilling to utilise the heritage asset at their disposal positively, then they are obliged to offer it to anyone who will.

4) Regeneration Potential

If the demolition would be harmful to the historic environment and redundancy has not been demonstrated, there would have to be some other overwhelming public benefit to compensate for the building's loss. The claim is that the new buildings would 'help revitalise the area'.

A consent is not a development. It is only a permission. A consent cannot revitalise an area, only a development can, and only the right sort of development at that. A consent will not guarantee a development, but it will increase land value and it will undoubtedly establish a precedent that cannot be rolled back on if the development does not take place. It will also establish the idea that if you neglect a building in a conservation area in Cherwell, you will eventually get consent to demolish. Neither an unbuilt development and a neglected site, nor a precedent that says 'neglect pays', can possibly be good for Banbury's canal-side.

Supposing the development was built, one is entitled to ask what these commercial units will do for the Cherwell Street / Canal Street area that the few score adjacent commercial units of similar type have failed to do for the area for the last three decades? The answer has to be 'very little indeed'. To regenerate, this area needs new ideas, new uses and new footfall. Six

more bland new-build commercial units located up a cul-de-sac will do nothing to revitalise the area. A revitalised heritage courtyard of diverse businesses and studio will.

- 5.3. **Additional comments dated the 18th February 2016** were received in response to additional information submitted by the applicant; these are summarised below:

The applicants presented additional costing of the works and the letting value of the completed works. This demonstrated that the works involved in conversion or new building were little different. It is not considered that suitable work has been carried out by the applicant to demonstrate whether others are willing to convert the building.

The impact on flooding has not been clearly demonstrated for the new build development.

In terms of the costs of works a conversion would result in high upfront costs whereas new building it is claimed would not. Works to address possible contamination of the site could be very costly.

The resulting yields from the two options are different due to a different footprint of the building.

- 5.4. **Additional comments dated the 26th May 2016** were received providing additional information on the 'alternative conversion scheme' put forward by Banbury Civic Society.

This application involves the demolition of an important locally-listed building in a conservation area, contrary to Cherwell Local Plan policies ESD 15 and Banbury 1: Banbury Canalside.

The applicant's argument for industrial units is thus based on claims that policy-compliant uses are not viable on this site and that the existing historic building is inherently incapable of being beneficially adapted to these, or other uses.

Over a period of one year and a half the Council has sought further reports from the applicant to justify the proposed development and demolition.

This historic building has been neglected and abused over a long period and it will require much work to transform it into an asset for the Canalside and Banbury. The purpose of the alternative proposal is simply to demonstrate that, beyond the peeling paint, damaged roof and blocked windows, the building could still be an asset that would benefit the regeneration of Canalside. It shows how, by working sensitively with the existing fabric, and without imposing in it unnecessary 'industrial' requirements such as 5 metre high eaves and 5 metre lorry doors, the building could be developed to form a versatile space for commercial workshops/studios.

Market intelligence would indicate that there is good potential demand for the sort of units envisaged (see Wild letter dated 21st February 2016).

Cherwell District Council:

- 5.5. **CDC Planning Policy:** *No policy objection subject to the application proposals being carefully considered against the NPPF, government guidance and local planning Policy in relation to the conservation and enhancement of the historic environment.*

- *The application proposals which are for employment uses, are located in central Banbury in an existing commercial area. Policy SLE1 of the Local Plan 2011 to 2031 states that on existing vacant employment sites, employment development, including intensification, will be*

permitted subject to compliance with other policies in the Plan and other material considerations. In this regard the application proposals are consistent with policy SLE1. However it will be necessary for proposals to be considered against the policy criteria, other policies and other material considerations. The application of policy SLE1 in this case should be considered with regard to proposals set out in policy Banbury 1.

- The application site is located towards the southern part of a wider area which is a strategic allocation in the Local Plan 2011 to 2031 (policy Banbury 1: Banbury Canalside and Inset Map Banbury 1) to deliver mixed use regeneration. The policy explains that 700 new dwellings can be delivered on the site with some employment uses remaining on the site. Policy Banbury 1 states that the re-development of Canalside will provide businesses with the opportunity to expand and invest for the future and that a number of the older buildings and former industrial sites at the Canalside site offer considerable opportunities for re-use or redevelopment for industrial enterprises. In this regard the proposals (in terms of redevelopment) are consistent with policy Banbury 1.
- There are a number of elements of policy Banbury 1 that are of relevance to this application in terms of implementation and design. The policy states that ideally proposals should come forward for the whole of the Canalside site accompanied by a detailed masterplan but applications for parts of the site may be permitted provided that they clearly demonstrate their proposals will contribute towards the creation of a single integrated community. It states that applications should cover significant land area within the site in order to achieve continuity in design and delivery of the vision. The policy also states that the Council will expect an application to demonstrate it has complied with the SPD and has taken into account the known or anticipated implications of proposals on adjoining areas.
- Ad hoc new buildings within the Canalside site in principle could adversely affect the future delivery of comprehensive proposals at Canalside. However this needs to be balanced against the need to allow the area to continue to have a functional role allowing businesses to operate in a sustainable central location in Banbury. Proposals coming forward in advance of a masterplan for the site mean that the application should where possible cater for future non-industrial uses potentially being located adjacent to the application site. It will be important that particular attention is given to the integration of the scheme, layout and the design of the new buildings and its operations. Great importance should be attached to design including compliance with policies set out above relating to design and the NPPF. Relevant key site specific design and place shaping principles set out for Banbury policy 1 will also apply. Development proposals should consider the recreational role of the canal and comply with policies regarding its future use and policies relating to any impacts on it. It is noted these matters are considered by the applicant, including allowing for future residential conversion of the new proposed building. If the proposals are permitted it may be necessary to attach conditions to the planning permission which will ensure effective design, layout and integration.
- Montagu Evans LLP were commissioned by Cherwell District Council to provide delivery and viability advice in relation to the Canalside site and the Banbury Canalside Viability Study was produced in September 2013. The viability of development proposals at Canalside is highlighted as challenging. The application site is part of Zone B in this study, which is located at the south western part of the Canalside site. The study expects this area (Zone B) to come forward later in the Local Plan period, in at least 15 years' time and therefore it is not anticipated that there is immediate scope for comprehensive residential led development on this part of the Canalside site, unlike on other parts of the wider Canalside site.
- In November 2009 a draft Supplementary Planning Document (SPD) for the Banbury Canalside site was produced by consultants for public consultation. The new Local Plan

generally supersedes the draft SPD as it is based on more up to date information, takes account of representations received and is now adopted, but the draft SPD is a material consideration, particularly where the Local Plan is silent on matters in the SPD.

- The application site is part of the 'Canal Walk' area shown at Figure 10 in the draft SPD and on page 65 the SPD shows that the area is expected to accommodate 100-200 dwellings. The SPD identifies the potential for the retention and refurbishment of listed and locally listed buildings to create start up units and the retention of the fine grain historic character of the area. However the draft SPD does not propose the retention of the former Burgess building.*
- In general terms the application proposals (which are for employment uses) are inconsistent with the draft Supplementary Planning Document (SPD) for the Canalside site which sets out a comprehensive residential led re-development approach for the Canalside site with no new build employment development envisaged in this location. The draft SPD has in effect been superseded by the Local Plan in terms of its overall approach to re-development. The Council will be producing a revised SPD for public consultation later in 2016.*
- The former Burgess building is included within the Oxford Canal Conservation Area. Figure 21 in the Oxford Canal Conservation Area Appraisal (October 2012) shows the area where the application site is located and the application site and its surroundings are described at paragraphs 7.71 to 7.74.*
- The former Burgess building is included in the Council's local list of buildings of architectural or historic value. The application proposals will require careful consideration against the NPPF, government guidance, local planning policy and advice related to the conservation and enhancement of the historic environment. Adopted 1996 Local Plan policy C23 states that there will be a presumption in favour of retaining buildings, walls, trees and other features which make a positive contribution to the character or appearance of a conservation area. Policy EN45A of the Non-Statutory Local Plan requires that the inclusion of a building in a local list of buildings of architectural or historic interest adopted by the Council for planning purposes will be a material consideration in the determination of planning applications that would affect it. Policy D10 (criterion (i)) of the Non-Statutory Local Plan states that within Banbury, development proposals adjacent to the Oxford Canal will be approved provided that they retain buildings and wharves identified by the Council as being of historic interest associated with the Oxford Canal. Policy Banbury 1 requires the retention and integration of the most valuable historic buildings/structures and the integration of existing historic buildings which will enrich the environment and maintain the long term character of the area. Policy ESD15 will apply and policy ESD16 refers to the protection and enhancement of the Oxford Canal corridor including 'significant industrial heritage'. The policy states the length of the Oxford Canal through Cherwell District is a designated Conservation Area and proposals detrimental to its character or appearance will not be permitted. The Oxford Canal Conservation Area Appraisal is a material consideration in determining this application and the fact that recent work resulted in the inclusion of the building in the Conservation Area is of relevance.*
- In March 2016 the Council published the draft Banbury Vision and Masterplan for public consultation. The document identifies the comprehensive redevelopment of the Canalside area and identifies that locally listed buildings will be retained if possible.*
- The application proposals will result in the removal of a building which is in a state of disrepair, and are one way of contributing towards the regeneration of the area. They are on previously developed (brownfield) land in a sustainable location in Banbury close to services and facilities and potential labour supply for the proposed new companies. A key aim of the Local Plan and the NPPF is to provide for economic growth and jobs and the proposals would contribute towards achieving this. Market signals should be considered and proposals are*

consistent with policy Banbury 1 in terms of its approach to the redevelopment of industrial premises for new employment uses. It is considered that proposals will not undermine and will contribute towards the delivery of the wider Canalside proposal (policy Banbury 1), which is a key element of the now adopted Local Plan.

5.4. CDC Conservation Officer: *object to the proposal for the following reasons:*

- The proposal to demolish the historic building will lead to the total loss of historic fabric as well as the essential form of the building and its historic integrity within the site. The proposed development causes substantial harm to the non-designated heritage asset of the Burgess Building.*
- The proposed development would lead to less than substantial harm to the Oxford Canal Conservation Area (as the demolition of the building would not harm the heart of the significance of the Oxford Canal), but the harm is never-the-less significant. The harm relating to the loss of this individual building is greater because of the contribution the building makes to the group of historic industrial buildings in the immediate locality. The harm is to the character as well as the appearance of the conservation area.*
- The replacement of the historic building by a modern constructed building of a similar footprint in a different location will not mitigate for the loss of this historic link to Banbury's past. The reconstruction of the existing building, replacing historic fabric where necessary, would retain the form, historic integrity and location of the building.*
- Public benefit – there are concerns that the short term benefit of the finding suitable tenants to occupy the site is being outweighed by the long term benefits of the strategic development site Banbury 1, which would be compromised by the demolition of this building.*

5.5. CDC Contaminated Land Officer: *Recommend the full contaminated land conditions are applied to this development as my records indicate potentially contaminative land uses on this site which may mean this proposal would be affected by land contamination. As such, I will require sufficient assessment information to demonstrate land contamination has been fully considered and the development is suitable for its proposed land use with regard to contamination.*

5.6. CDC Estates:

Comments dated the 19th April 2016 based on supporting planning statement and structural survey

It is quite evident that the building is in extremely poor physical condition. In order to bring the building up to current building control standards allied to adapting it to provide a level of specification to attract occupiers, substantial alteration and demolition would be required.

With the level of demolition and adaptation required, it is unlikely much of the existing structure would remain and therefore this would compromise and diminish the authenticity of the building and therefore its historical relevance.

However, there is clearly historical importance attached to the site and whilst this might not be possible to be reflected in the retention of the existing building, the applicant could reflect the history by incorporating some of the existing structure into the new build and/or by contributing to the preparation of a publication outlining the history of the site.

Comments dated the 9th March 2016 on supporting planning statement

The building is located in a traditional industrial area where the surrounding occupiers and buildings are generally of a poor standard and this will undoubtedly influence the calibre of tenant who would be seeking a unit in this location regardless of the refurbishment or new build proposal.

As demand is high and supply low, provided the units are suitable for purpose by a hypothetical tenant I believe the level of rent achievable would not be differ between a refurbished option and a new development.

However, a minimum specification would need to be met by both options in order to attract tenants namely:

5 metre clear eaves height

3m x 3m goods access and personal door

3 phase power

Concrete floors

Parking and good circulation – There is no denying the circulation provided by the new development option is much better than what is currently available should the building be retained.

Although the rent per square foot will be the same for either option, the potential total rental return will be higher for the new development proposal because it provides for 124 sq metres (1,335 sq ft) of additional lettable floor space to be constructed.

With regards the yield which would be adopted to ascertain the value of each option, provided a full refurbishment is undertaken to a high standard and the minimum hypothetical tenants requirements, I believe the difference in yield to be applied to a capital valuation would be minimal as this is more dependent on the quality and surety of the tenants rather than whether a building has been adapted or is a new build.

Whilst the valuation argument is theoretical, one of the most important factors to consider is whether the existing building is able be physically adapted to provide the hypothetical tenants minimum specification to maximise its commercial value and whether the physical integrity of the existing building would tolerate large scale adaptation.

The existing building is in extremely poor condition and I suspect once large scale works were undertaken to adapt the building, some areas may collapse. Further the costs provided by the applicant to refurbish the building could well be compromised because inherently further costs for refurbishing old buildings only become evident once work starts. My initial view is that it would prove extremely difficult to convert the existing building to comply with modern commercial requirements and Building Regulations and even if they were undertaken, there would be very little fabric remaining of the existing building.

Comments dated 20th May 2016

In the planning application submitted, the proposal is to demolish the existing former Burgess Building and provide six 'traditional' light industrial units. In this context, my previous comments regarding the hypothetical tenants preferred requirement including a clear eaves height of 5m remain. Therefore I still believe the state and condition of the existing building would prove difficult to convert and adapt to provide the requirements in order to maximise commercial viability and it is likely the majority of the original construction would be lost.

Graphics have subsequently been submitted showing an alternative scheme for the building which illustrates a different type of development comprising more 'workshop/business' units. Whilst the graphics show an attractive aesthetically pleasing canal side scheme they are not supported with detailed costs to convert the existing building to provide the accommodation. I am therefore unable to comment on the commercial viability of this proposal but can make general comments regarding the concept.

The proposed refurbishment scheme provides a different type of unit to the light industrial units proposed in the original application and therefore it is likely to attract a different type of occupier to the type of company looking for a more 'industrial' environment. There is undoubtedly demand for small business units of this type but generally they are found more in rural locations where the rural environment forms an important consideration as opposed to being surrounded by buildings of poor quality in a more 'industrial' environment. However, I still consider there will be a level of demand from businesses looking for this type of accommodation regardless of the situation. I am unable to comment specifically on the level of demand or the level of rent which this type of units would attract and it would prove useful to see a market appraisal in this respect so this can be considered alongside the cost of conversion to fully assess commercial viability.

It is likely that the cost of construction will be less than the original proposal as much of the existing building would be retained for the development and there would be less adaptation required.

In summary, whilst the new proposed scheme provides an alternative to the scheme submitted in the original application there is insufficient information currently available to fully appraise whether the scheme is commercially viable.

Oxfordshire County Council:

5.7. Highways No objection subject to conditions:

The development proposals are unlikely to have a significant adverse impact on the transport network over and above that which the existing permitted use would generate. The site is located within a reasonable sustainable location within walking distance of the town centre and bus stops. No transport statement is required as the proposal is unlikely to have a significant adverse impact on the transport network over and above that which the existing permitted use would generate.

Site is located adjacent to the bus depot, which is used as a support base for all local bus routes within the town and for inter-urban routes. Unfettered access is required to this depot at all times to facilitate effective and efficient operation of these bus services. This scale of the operation at the bus depot is likely to increase with the additional housing in Banbury.

5.8. Archaeology No objection subject to conditions:

The application site is of considerable archaeological potential with the potential for important post medieval industrial features surviving in situ. The site is the former Cherwell Iron Works or Barrows & Stewart, later Browns & Carmichael, manufacturers of portable steam engines and agricultural equipment. The manufacture of agricultural equipment was once a key Banbury industry, with three main makers. This is the only remaining site within which there is the potential, for surviving in situ features that relate to the on-site activities and the equipment utilised within them. The building to be demolished is likely to have been the main erecting shops, whilst the new build is going over the site of the likely forges and foundry. No records or historic plans are known to exist. The building lies in the Oxford Canal Conservation Area.

It would be preferable if the demolition works are to the depth of the original ground slab to ensure any features below there are preserved in situ.

The building to be demolished is included in the Cherwell list of locally important buildings. Few other sites with the potential for in situ features survive.

Recommend that should permission be granted that a programme of monitoring and recording is undertaken. This can be ensured through the attachment of suitable conditions.

5.9. Historic England

Comments on the originally submitted scheme:

Recommend Refusal: The demolition of the Former Cherwell Works would harm the significance of the Oxford Canal Conservation Area. As it has not been demonstrated that the building is incapable of being repaired and put it to a new use we do not consider this harm to be justified.

The development site contains the former Cherwell Works, a foundry which manufactured agricultural machinery and falls within the Oxford Canal Conservation Area. While the existing building is of little architectural value and there is little visual connectivity between the canal and the site we consider the building to be of historic interest as one of the last remnants of the once thriving agricultural engineering industry in Banbury and thus makes a positive contribution to the character of the conservation area and justifies its status as a locally listed building. Its demolition and replacement will therefore not only result in the loss of a building of local historical importance but also harm the significance of the conservation area as a whole. Given that so little remains of Banbury's Industrial heritage we counsel that this harm should not be regarded as trivial but taken seriously and only accepted if there is a very strong justification.

The current proposal differs from the 2012 application in that rather than simply demolition a replacement development of 6 industrial units is proposed. The Design and Access Statement submitted with this application recognises that the building is of historical importance but asserts that it is beyond economic repair and thus demolition is necessary in order to bring the site back into use. Paragraph 132 of the NPPF requires clear and convincing justification for any harm to a heritage asset while paragraph 134 of the Framework requires harm to the significance of a designated heritage asset, which includes conservation areas, to be weighed against the public benefits of the proposal. While we recognise that there is a public benefit in bringing this site back into use simply asserting that the building is beyond economic repair does not demonstrate this. As no firm evidence has been provided that the building is beyond economic repair we cannot accept that the harm entailed has been clearly and convincingly justified.

We are aware that the current owners have brought the site since the 2012 application. The purchaser was presumably well aware of the planning history of the site and the presumption that the building would need to be retained when they brought it and purchased it at a price assumed this and reflected its condition. Any development appraisal that is submitted in order to justify demolition will have to be examined carefully to ensure that the purchase price was not inflated by any hope value of the site as a development site, which would distort the calculations.

We recommend that this application is refused unless the applicants can demonstrate clearly and convincingly that retention and repair of the current building is not possible.

Comments on additional planning and heritage statement including Structural Report and approximate budget estimates:

Recommend Refusal: The additional information submitted does not amount to a clear and convincing justification for the demolition of the former Burgess Building. The Heritage Statement does not contain any information which causes Historic England to change its opinion on the significance of the building. The building is in a very poor state of repair and the key question is therefore whether it is capable of economic repair and finding a new use.

The budget estimates supplied suggest that the cost differential between refurbishing the existing building and replacing it is small. The report also states that 'New Bespoke buildings will be far more capable of securing long term investment that compromised renovation as they can be constructed to modern requirements,' However, there is no reason why a good refurbishment could not command a similar rental value as a new build given that the condition of the refurbished building and facilities offered could be as good as a new one. Furthermore, the report includes no development appraisal of the likelihood that any of the scheme considered would be commercially viable. The report does not present a clear and convincing case for demolition.

Further comments on supporting planning statement dated January 2016:

The revised information still does not resolve the issue of whether the Burgess Building is beyond economic repair. We recommend that the Council seek independent advice on this matter. The latest information on viability demonstrates that the total costs of demolition and building anew would cost slightly more (£22,800) and yield a smaller rental income (£12,648 less per annum). It also argues that the financial constraints on the current owner mean that refurbishment is not a viable option for them.

Economic repair should not be framed in terms of whether a particular applicant can afford to do the works, but whether the return generated would justify the investment. We are not convinced that the case for demolition of the Burgess Building is convincingly justified, as required by paragraph 132 of the NPPF.

Further comments in email dated the 19th April 2016

As the Local Planning Authority have now taken advice on the viability of the scheme, the matter of economic viability has been fully considered and if the LPA conclude that it would not be economically viable to retain the building we would not object as the matter has now been given proper consideration. Paragraph 134 of the NPPF requires the LPA to weigh harm against public benefit, including finding the optimum viable use for the site.

Comments dated the 19th May 2016

I am aware that this is to go to committee this afternoon with a recommendation to defer. I am at present in discussions with Victor Sye as it is becoming clear that his opinion was based on a 5m door height, which may not be necessary, and industrial use, which I understand would be contrary to the Council's aspirations for the area as set out in policy Banbury 1 of the local plan. I have asked for Victor's opinion on whether commercial use and a lower door height, which would involve less structural intervention, would result in a scheme that is viable in current market conditions. Consequently I would like to withdraw my recommendation that we would not object to demolition as I think a decision should be deferred until he has reported on these issues.

Having asked for independent advice to be taken I think it important that we accept the recommendations made. However, it is vital that the right question has been asked of the adviser if the advice is to be judged sound.

5.10. Environment Agency

We have no objection to the application as submitted, subject to the inclusion of a number of conditions, to deal with any contamination on the site to ensure no seepage to the canal/river. Without the inclusion of these conditions we consider the development to pose an unacceptable risk to the Environment.

The Flood Risk Assessment reference: Redevelopment of Former Burgess Site at Canal Street, Banbury dated December 2014 undertaken by Wellan confirms that the site is within the area benefitting from the Banbury Flood Alleviation Scheme (FAS).

We are pleased to see that the FRA confirms that the proposed finished floor levels of the buildings will be set at 90.8 m AOD, which is around 370 mm above the 1 in 200 flood level for the site (equivalent to the 1 in 100 plus climate change flood level) .

However, we would recommend that the finished floor level is set higher at 91.21 m AOD which is 300 mm above the 1 in 200 undefended flood levels. This is so that the proposed development is protected if the FAS fails during a flood event.

If the finished floor levels cannot be set at the recommended level then we would recommend that flood resilience/resistance measures are installed that provided a standard of protection up to the 1 in 1000 flood undefended flood level of 91.05 m AOD

5.11. Canals and Rivers Trust

While we have no concerns relating to the proposed design of the development we note that the offside wall of the Oxford Canal is currently in an unknown condition. We would therefore recommended that whilst the site is accessible the opportunity is taken to undertake a study of the condition of the wall and if necessary stabilisation of it by piling with a brick capping detail or similar, to be approved. This will require third party works approval.

The applicant should also ensure that the area behind the rear wall for the buildings, and adjacent to the canal edge is suitably maintained and access is available to it for maintenance of both the land and canal if necessary.

If the Council is minded to grant planning permission, it is requested that the following informative is attached to the decision notice:

“The applicant/developer is advised to contact Osi Ivowi on 01908 302 591 in order to ensure that any necessary consents are obtained and that the works comply with the Canal & River Trust “Code of Practice for Works affecting the Canal & River Trust”.

6. Relevant National and Local Planning Policy and Guidance

6.1 Development Plan Policies:

The Cherwell Local Plan 2011-2031 Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the Development Plan. Planning legislation requires planning decisions to be made in accordance with the Development Plan unless material planning considerations indicate otherwise. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

Cherwell Local Plan 2011 - 2031 Part 1

Policy PSD1: Presumption in Favour of Sustainable Development

Policy SLE1: Employment Development

Policy ESD6: Sustainable Flood Risk Management

Policy ESD8: Water Resources

Policy ESD10: Protection and enhancement of Biodiversity and the Natural Environment

Policy ESD15: The Character of the Built and Historic Environment

Policy ESD16: The Oxford Canal

Policy Banbury 1: Banbury Canalside

Cherwell Local Plan 1996 (Saved Policies)

Policy C23: Retention of features contributing to character and appearance of a conservation area

Policy C28: Layout, Design and external appearance of new development

Policy C29: Appearance of development adjacent to the Oxford Canal

Policy ENV1: Development likely to cause detrimental levels of pollution

Policy ENV12: Development on contaminated land

6.2 Other Material Planning Considerations:

National Planning Policy Framework (The Framework) – the National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied.

Planning Practice Guidance (NPPG) – This sets out regularly updated guidance from central Government to provide assistance in interpreting national planning policy and relevant legislation.

7. Appraisal

7.1 Officers' consider the following matters to be relevant to the determination of this application:

- Principle of Development,
- Structural stability and economic viability;
- Impact on Heritage Assets;
- Accessibility, Highway Safety and Parking;
- Design, form and scale;
- Visual Impact;

- Flood Risk;
- Effect on Neighbouring Amenity;
- Trees and Landscaping;
- Ecological Implications;
- Archaeology;
- The Planning Balance.

Principle of development

- 7.2 The National Planning Policy Framework (NPPF) sets out a presumption in favour of sustainable development, which should be seen as the golden thread running through both plan-making and decision taking. Development proposals should be considered in accordance with the development plan, unless material considerations indicate otherwise.
- 7.3 The site is located to the south east of the town centre of Banbury, falling outside of the town centre designation (Policy Banbury 7). The site is considered to be within a sustainable location close to the town centre of Banbury, which offers a good level of services and public transport facilities.
- 7.4 The planning application proposals, which are for an employment use, are located in central Banbury in an existing commercial area. Policy SLE1 of the Local Plan 2011 to 2031 states that on existing vacant employment sites, employment development, including intensification, will be permitted subject to compliance with other policies in the Plan and other material considerations. In this regard the application proposals are consistent with policy SLE1. However it will be necessary for proposals to be considered against the policy criteria, other policies and other material considerations. The application of policy SLE1 in this case should be considered with regard to proposals set out in policy Banbury 1.
- 7.5 The application site is located towards the southern part of a wider area which is a strategic allocation in the Local Plan 2011 to 2031 (policy Banbury 1: Banbury Canalside and Inset Map Banbury 1) to deliver mixed use regeneration. The policy explains that 700 new dwellings can be delivered on the site with some employment uses remaining on the site. Policy Banbury 1 states that the re-development of Canalside will provide businesses with the opportunity to expand and invest for the future and that a number of the older buildings and former industrial sites at the Canalside site offer considerable opportunities for re-use or redevelopment for industrial enterprises. In this regard the proposals (in terms of redevelopment) are consistent with policy Banbury 1.
- 7.6 There are a number of elements of policy Banbury 1 that are of relevance to this application in terms of implementation and design. The policy states that ideally proposals should come forward for the whole of the Canalside site accompanied by a detailed masterplan but applications for parts of the site may be permitted provided that they clearly demonstrate their proposals will contribute towards the creation of a single integrated community. The policy also states that the Council will expect an application to demonstrate it has complied with the Supplementary Planning Document and has taken into account the known or anticipated implications of proposals on adjoining areas. Ad hoc new buildings within the Canalside site in principle could adversely affect the future delivery of comprehensive proposals at Canalside. Development proposals should consider the recreational role of the canal and comply with policies regarding its future use and policies relating to any impacts on it. These elements of Policy Banbury 1 have been considered by the applicant and the application advises that the new development will redevelop the site which is currently offering no economic role within the community as it is vacant and in decline. The proposed scheme has been designed to reflect the wider objectives of Policy Banbury 1 by incorporating in the design a walkway along the canal to ensure future pedestrian links within the site and to

ensure the recreational use of the canal and the proposed commercial units could be easily converted in the future to a number of uses including retail and residential. The proposed development is therefore considered to incorporate elements within the design which will allow the regeneration of the whole site and contribute to an integrated community in accordance with Policy Banbury 1.

- 7.7 Policy Banbury 1 seeks the retention and integration of the most valuable historic buildings on the site and the integration of existing historic buildings which will enrich the environment and maintain the long term character of the area. The proposal includes the demolition of the Burgess Building which is a locally listed building and has been identified by Historic England and the Council's Conservation officer as being of historical significance as part of a group of locally listed buildings in the Canal Conservation Area. The building is significant as one of the few remaining buildings of previous engineering companies based along the Canal, and the proposal to demolish it would be at odds with Policy Banbury 1.
- 7.8 The applicants have sought to demonstrate that demolition is the only viable option on the grounds that the existing building, due to its poor structural state which is detailed below, would require significant works to allow a suitable conversion. Therefore the principle of development will be in large part dependant on whether the case has been made for the demolition of the existing building. The issues of structural stability of the building and historical importance of the building will be covered in more detail in the following sections of this report.
- 7.9 Policy ESD 16 of the Cherwell Local Plan 2011-2031 Part 1 seeks to protect and enhance the Oxford Canal. Proposals which would be detrimental to its character or appearance will not be permitted. This policy also supports the enhancement of the canal through mixed use development within urban settings. Saved Policy C23 of the Cherwell Local Plan 1996 contains a presumption in favour of retaining buildings which make a positive contribution to the character or appearance of the conservation area. The proposed development will demolish a locally listed building within the canal conservation area. The harm caused to the conservation area needs to be balanced against the public benefit of bringing the site back into use which will be set out in the following sections of this report.
- 7.10 The proposed scheme does bring the site back into commercial use within a sustainable location which meets the requirements to support economic growth set out within Paragraph 19 of the NPPF. Significant weight should be placed on the need to support economic growth through the planning system. The proposed development includes the provision of 6 new build commercial units amounting to 1200 square metres of floor space. The proposed development would bring the site back into use and would therefore support economic growth within Banbury. At present the vacant site is offering very little economic benefit for the area.
- 7.11 In conclusion the proposed development provides for a sustainably located employment use within an existing commercial area of Banbury and has considered the future regeneration of the site which is sought under Policy Banbury 1. In principle the proposed new commercial building could therefore be acceptable and would not cause undue harm to the future intentions for the wider development area, but this is subject to the demolition of the existing building being fully justified. An assessment of the impact of the proposal under other policies in the Development Plan, including heritage, transport and flood risk, will be made under the headings below.

Structural Stability and Economic Viability

- 7.12 The existing building on the site is the subject of a structural survey submitted with the application. The conclusions of the structural survey highlight that the existing building and the ancillary aspects of the site are in a very poor structural state. The absence of a use for the

building for many years has resulted in the partial collapse of the roof and the dangerous condition of the building. The proposed development seeks to demolish the existing building and construct a new detached building along the southern boundary of the site.

7.13 As part of the assessment of the proposals consideration must be had as to whether the existing building is capable of conversion and whether such a conversion is economically viable. The existing building is in a very poor unstable structural state which is detailed within the submitted structural survey and additional information, Appendix A (drawing no. 1360-06 and SK/08) which illustrates the amount of built fabric which will have to be removed and rebuilt to allow a suitable conversion to B2 use. From the submitted structural information it is clear if a scheme for conversion of the building to B2 was being considered to provide a suitable and viable building to meet modern commercial build standards, substantial alteration and demolition would be required as follows:

- Entire roof to be removed and replaced with new construction
- Removal of roof may compromise the stability of the external walls which will require support during works;
- Much of the northern boundary wall is unstable and will require rebuilding;
- Southern elevation would need demolishing and rebuilding where they are rotating outwards;
- Significant rebuilding of brick walls – new openings to the south will lead to unstable elevation which will require rebuilding.
- New floor slab required at a higher level to address flooding issues.
- Much of the external walls are rendered and therefore extent of rebuilding of walls will only become clear once render is removed.
- Raising of the eaves height by approximately 1 metre to allow 5 metres clear eaves height.

7.14 With the level of demolition and adaptation required, the existing building would be significantly altered and is therefore not considered to be suitable for conversion for a B2 general industrial use as proposed as part of the new build scheme. However, Historic England and a number of third parties, including the Banbury Civic Society, consider that there may be a viable option for the existing building to be converted and reused for an alternative use to that currently proposed, such as small commercial workshop/studio uses. As evidence of this, Banbury Civic Society have put forward an alternative possible conversion scheme for the existing building for use as small workshop/studio uses (use class B1).

7.15 The Council's Estates and Facilities Department have reviewed the available evidence and agree that, from a commercial point of view, at the present time the existing building will prove very difficult to convert to B2 use to meet modern standards. However, having considered the alternative scheme for small workshop/studios put forward by the Banbury Civic Society, the Council's Estates and Facilities Management department consider that a conversion scheme for workshop/business units would likely require less adaptation of the building, and would likely cost less than the proposed new build scheme as much more of the building's fabric would be retained.

- 7.16 Unfortunately the alternative scheme put forward by the Civic Society is not presented with conversion costs to compare against the proposed scheme or a marketing exercise to assess the commercial viability of the alternative scheme. The alternative scheme is, however, evidence that there is a possible conversion scheme that is compliant with the aspirations of Policy Banbury 1 and which can retain the existing building with limited adaptation of the building. Furthermore the conversion scheme put forward by the applicant has been supported by costings and illustrates that a conversion scheme or new build scheme have similar total costs for a B2, 6 unit scheme. The budget estimates set out in the supporting planning statement submitted by the applicant details a total cost of £1,671,500 for a refurbishment scheme and £1,648,700 for a new build scheme. These figures illustrate that the building could be converted without greater cost to the developer. As the alternative conversion scheme put forward by Banbury Civic Society would likely require much less intervention (and so reduced costs), this adds weight to the view that the alternative conversion scheme could represent a more suitable and viable use for the building which does not require its demolition and new build.
- 7.17 In economic terms the building is located in a traditional industrial area where the surrounding buildings are generally of a poor standard and this will undoubtedly influence the calibre of tenant who would be seeking a unit in this location, regardless of a refurbishment or new build option. Nevertheless the Council's Estates department advises that demand for small units is high and supply is low, and providing that the units are suitable for purpose, the level of rent achievable would not differ significantly between a refurbished option or a new development.
- 7.18 There is no market appraisal submitted with the application to allow comparison between the new build B2 scheme proposed and alternative conversion schemes for other Policy Banbury 1 complaint uses. Therefore, it is your Planning Officer's opinion that without a full market appraisal and build costs of the proposed scheme and reasonable alternative conversion schemes, full and proper consideration for the retention of this important locally listed building within the canal conservation area has not been adequately demonstrated. This consideration is required in order to adequately justify the demolition of the building. The proposed development is therefore considered to be contrary to the requirements of Policy Banbury 1 of the Cherwell Local Plan 2011-2031 which seeks to retain and integrate the most valuable historic buildings into the redevelopment of the Canalside area.

Impact on Heritage Assets

- 7.19 The site is located within the Oxford Canal Conservation Area (designated heritage asset). The site comprises an existing building known as the Burgess Building which is a locally listed building (non-designated heritage asset). The proposed scheme must therefore be assessed taking into consideration the impact of the proposal on the setting of the Conservation area and the impact on the non-designated heritage assets.
- 7.20 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") sets out the duty of the Local Planning Authority in assessing applications which affect Conservation Areas. Subsection (1) of Section 72 provides: *"In the exercise (of its powers), with respect to any buildings or other land in a conservation area, ... Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*
- 7.21 Paragraph 131 of the National Planning Policy Framework sets out the factors to be taken into account when considering applications which affect designated heritage assets. Paragraph 135 of the National Planning Policy Framework (NPPF) sets out the assessment to be made in relation to an application which affects a non-designated heritage asset and indicates that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

- 7.22 The Conservation Officer has commented on the proposals and has raised an objection to the proposed development, to demolish the existing building. The Conservation Officer comments have identified the significance of the building and the Conservation Area. The existing building is an integral part of the industrial heritage of the canal side area and makes a positive contribution to the Conservation Area. The significance of the building predominantly relates to its historical importance rather than its architectural merit, although it is a representative building of its type and is a rare survival in the local context.
- 7.23 The building, now known as the Burgess Building, was previously Cherwell Iron Works and was originally built in 1862 for Barrows and Kirby. The firm was one of three large engineering companies in the area. The company produced pioneering portable steam engines, steam ploughing machinery and threshing machines. The surviving buildings are believed to have been the main assembly buildings, fitting shops and stores. The Burgess Building forms part of a group of locally listed buildings and the group value of these non-designated heritage assets contributes to their collective significance.
- 7.24 The site is located within the Oxford Canal Conservation Area and the Burgess Building is specifically referred to in the Canal Conservation Area Appraisal 2012 as one of the buildings included in a 'positive vista' from the south of the site and the significance of the area is identified in the appraisal as follows: *'The section to the south of Bridge Street is strongly influenced by its industrial past, bounded either side with former industrial buildings, modern warehousing and a mobile home park. The area between the west bank of the canal and Lower Cherwell Street retains greater historical and architectural interest than the previous section due to the lack of modern development'. 'A small office building and a warehouse, very rare survivals of canal related architecture with the town also remain'.*
- 7.25 The demolition of the existing building will lead to the total loss of the historic fabric as well as the essential form of the building and its historic integrity within the site, therefore the proposed development causes substantial harm to the non-designated heritage asset of the Burgess Building. Paragraph 135 of the NPPF advises that in weighing applications that directly affect non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 7.26 Turning to the impact on the Conservation Area, the proposed demolition of the existing building would lead to less than substantial harm to the significance of the Oxford Canal Conservation Area. The Conservation Officer has advised that the harm is less than substantial because the demolition of the building would not harm the heart of the significance of the Oxford Canal, but the harm is never-the-less significant. Therefore, the harm needs to be justified and needs to be weighed against the public benefits of the proposal.
- 7.27 In weighing up the planning balance, it is first necessary to establish the level of significance of the building as a non-designated heritage asset. Given the building is recognised as one of the last remaining canalside buildings from Banbury's Victorian industrial heritage, and given it is specifically referred to in the Conservation Area appraisal as "a very rare survival" of canal related architecture which makes a positive contribution to this part of the Conservation Area, its significance as a heritage asset of local importance is considered high. The scale of harm or loss to the significance of the heritage asset would also be high, and so the level of justification that is required for its demolition is high.
- 7.28 The Council's Planning Officers consider that inadequate information has been submitted to demonstrate a full assessment has been carried out to consider whether the existing building can be viably converted, including proper consideration of alternative uses compliant with Policy Banbury 1, such that on the basis of the available evidence it would be premature to approve the demolition of this locally listed building. With regard to the impact on the

Conservation Area, Paragraph 132 of the National Planning Policy Statement seeks to ensure that any harm to a designated heritage asset, in this case the conservation area is clearly and convincingly justified. Following consideration of the possible alternative conversion scheme put forward by the Banbury Civic Society it would appear that there may be a viable conversion scheme which will retain the non-designated heritage asset and avoid demolition within the canal conservation area. The possible conversion scheme to reuse the units as small workshops/business units would reduce the amount of adaptation required, compared with the proposed general industrial uses, and based on the costs of conversion submitted by the applicants is likely to cost a similar amount as a new build scheme. Based on the lack of evidence of full consideration for alternative viable conversion schemes it is considered that adequate justification has not been provided for the demolition of the Burgess Building. Therefore, the proposal is considered to cause unjustified harm to the Conservation Area and would be contrary to paragraph 132 of the National Planning Policy Statement.

- 7.29 The site is of considerable archaeological potential with the potential for important post medieval industrial features surviving in situ. Few other sites with the potential for in situ features survive. However the County Archaeologist does not object to the proposal, and it is recommended that a programme of monitoring and recording is undertaken which can be secured through the attachment of a suitable condition.

Design, Form and Scale and Visual Impact

- 7.30 Policy ESD15 of the Cherwell Local Plan states that new development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. This includes a requirement for new development to respect the traditional pattern of routes, spaces and plots and the form, scale and massing of buildings. It also states development should contribute positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography. Saved Policy C28 and C30 of the 1996 Local Plan seeks to ensure the layout, scale and design of development is of a high standard.
- 7.31 The impact of the proposed demolition of the existing building on the character and appearance of the area is considered above. However, and notwithstanding officers' conclusions on this matter, it is also necessary to consider whether the proposed building represents good design. The building measures a maximum 7 metres in height and has a footprint of approximately 65 metres long and 17 metres deep, with a maximum depth at the eastern end of 35 metres. The new building is of a scale and form which is considered to respect the scale and form of the development which surrounds the site. The external appearance of the building which is to be constructed from red brick, with a blue brick soldier course and elevation detailing and a natural slate roof is considered to be of a good quality design which will preserve the character and appearance of the Conservation Area.
- 7.32 The building will be visible from the canal and from the tow path. The view of the site from the canal is considered to be improved by the proposed development. This is due to the existing wall of the site immediately adjacent to the canal being in a very poor state, which will be replaced by a strip of land immediately adjacent to the canal to allow pedestrian access along the canal side within the site, and the new elevation of the building being of a good quality design comprising arched openings. The proposed development is considered to sit comfortably within the surrounding landscape and will improve views into the Conservation Area from the Canal.

Accessibility, Highway Safety and Parking

- 7.33 The Local Highway Authority has commented on the proposals and has raised no objection to the proposals. The development proposals are unlikely to have a significant adverse impact

on the transport network over and above that which the existing permitted use would generate. The site is in a reasonably sustainable location, being within walking distance of the town centre facilities and bus stop. The proposed development provides for 3 additional car parking spaces compared with the number available within the existing site. The proposed development will not cause an adverse impact on the safety of the highway within the locality.

Flood risk

- 7.34 Paragraph 100 of the NPPF states that: *Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.* It also states that planning should use the: *opportunities offered by new development to reduce the causes and impacts of flooding.* The existing building is located within Flood Zones 2 and 3 and therefore is currently at a medium to high risk of flooding. The site was affected by flooding in 2007 and has not been affected by flooding since the Banbury Flood alleviation works have been carried out. The current building floor level lies at approximately 90.06 to 90.07 metres AOD. The modelled flood plain data shows that flood levels for the 1% probability (1 in 100 year) event as 90.08m AOD maximum. For the 0.5% probability (1 in 200 year) event the maximum level is 90.43m AOD and the Strategic Flood Risk Assessment advises that the 0.1% probability (1 in 1000 year) event gives a predicted maximum flood level of 91.04m AOD. Therefore, the existing building is at a high risk from flooding in its current location.
- 7.35 The proposed building has a finished floor level of 90.8m AOD which is set higher than the existing buildings finished floor levels and it is stated in the FRA that this will be adequate to prevent water entry for a 1 in 200 year case, 0.5% probability of flooding. The siting of the new building close to the southern boundary of the site and the higher finished floor level will reduce the risk of flooding to the building compared to the existing situation which could be affected by the 1 in 100 year event.
- 7.36 The Environment Agency (EA) have commented on the scheme and have advised that they are pleased to see that the proposed finished floor levels of the building are to be set at 90.8m AOD. However, the EA have recommended that the finished floor level is set higher at 91.21m AOD which is 300mm above the 1 in 200 undefended flood level. This is so that the proposed development is protected if the Flood Alleviation Scheme fails during a flood event. If the finished floor levels cannot be set at the recommended level then the Environment Agency would recommend that flood resilience/resistance measures are installed that provide a standard of protection up to the 1 in 100 undefended flood level of 91.05m AOD. The requirements of the EA can be secured through a suitably worded pre-commencement condition to seek details of the finished floor level and any additional resilience required.

Contaminated Land

- 7.37 The Council's Environmental Protection Officer has commented on the proposal and has highlighted that the site could potentially be contaminated due to previous land uses and has therefore advised the use of phased conditions to deal with any contamination found on the site.
- 7.38 The Environment Agency in their comments have also identified the potential for contamination on this site due to previous land uses which may introduce a potential source of contamination such as fuel tanks and other oil storage and other sources of contamination given the history of the site. Furthermore, the site is located directly adjacent to the Oxford Canal and located above a secondary aquifer (Alluvium). These are controlled water receptors which could be impacted by any contamination present on this site. Further investigation would be required to determine the extent of any contamination present and to what extent it

poses a risk to controlled waters. Any risk identified would need to be adequately resolved to ensure that no risk is posed on controlled water receptors. This may include remedial works to resolve contamination issues.

- 7.39 The Council's Planning Officers are satisfied that suitable conditions can be attached to the recommendation to deal with contamination identification and any remediation required.
- 7.40 The Council's Environmental Protection Officer has identified that no information regarding air quality at the site has been submitted. The site comprises an existing building which is located within an existing commercial environment. The site already attracts a high number of vehicles to the site which is currently used for car parking in relation to the existing surrounding uses. The existing building has an established general industrial use based on its previous historic use which is considered to be an acceptable use in this area due to the existing surrounding uses. The proposed scheme comprises a building of a similar scale to the existing building which would not be considered to significantly increase the vehicle trips to and from the site and would therefore not be considered to further harm air quality in this location.

Effect on neighbouring amenity

- 7.41 The site is surrounded by a range of commercial uses within the vicinity of the site therefore the proposed commercial use of the site is considered to be a suitable use which would sit comfortably with the existing neighbouring uses without undue harm.
- 7.42 The closest residential properties are located at number 1 to number 8 Cherwell Wharf. These dwellings are separated by other commercial uses by the site which is the subject of this application, and therefore the proposed development would not be considered to adversely harm the residential amenity of the occupiers of these residential properties. The proposed development will therefore be in accordance with saved policy C28 of the Cherwell Local Plan 1996.

Ecological Implications

- 7.43 Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making. Paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation states that: *It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.*
- 7.44 Paragraph 109 of the NPPF states that: *The planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and providing net gains in biodiversity where possible.*
- 7.45 The application is supported by a bat survey which confirms that there are no bats using the building. The use of this building by bats is highly unlikely due to the derelict state of the roof. There is some evidence of nesting birds using the site and therefore the applicant shall be made aware of this through a planning note attached to the recommendation.
- 7.46 The planting proposed will be beneficial to wildlife, especially if it is a berry bearing species. A suitable landscaping condition will be applied to ensure that the species comprised in the landscaping of the site are native to provide ecological improvements on the site.

Conclusions

- 7.47 At the heart of the NPPF is a presumption in favour of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 of the NPPF states that: *these roles should not be undertaken in isolation, because they are mutually dependant...therefore, to achieve sustainable development (the three dimensions) should be sought jointly and simultaneously through the planning system.*
- 7.48 The proposed development would deliver social, environmental and economic benefits with the opportunity of bringing the site back into an economically beneficial use, improving the flood risk of the site by resiting the building and raising the height of the floor level, improving the access and servicing at the site, and providing a modern and high quality-designed commercial building within a sustainable location.
- 7.49 However the proposals would also result in the loss of a locally listed building (non-designated building) within a Conservation Area, which is contrary to Policy Banbury 1 and Policy ESD15 of the Local Plan 2011-2031 Part 1 and saved policy C23 of the Local Plan 1996 which seeks to retain important buildings within this area and buildings which make a positive contribution to the Conservation Area. As such the proposals would result in clear environmental, and to a lesser extent, social harm. The building is recognised as being in a very poor structural state which would require extensive demolition and rebuilding to be successfully converted to B2 uses as proposed in this application. However, on the basis of the available evidence, including the possible alternative conversion scheme put forward by the Banbury Civic Society, it appears that the building could be converted to an alternative use, compliant with Policy Banbury 1, which requires less adaptation and would therefore not require substantial alteration. It is therefore the Council's Planning Officer's view that the application has provided inadequate evidence to allow full assessment of possible alternative uses for the building, and given the relative historic importance of the building these are required to be discounted as they could offer viable a use for the retention of the existing building. Therefore the proposal would cause unjustified harm to and loss of an important non-designated heritage asset, with associated harm to the Oxford Canal Conservation Area, and is therefore considered to be contrary to Paragraphs 132, 134 and 135 of the NPPF, furthermore, the proposal is contrary to Local Plan policy Banbury 1 and ESD 15 of the Cherwell Local Plan 2011-2031 and saved policy C23 of the Cherwell Local Plan 1996.
- 7.50 All-in-all, and in the absence of adequate justification for the demolition of the building, the adverse impacts of the proposal in terms of the considerable loss or harm to heritage assets and the resulting conflict with Development Plan policy and the guidance contained in the NPPF are considered to outweigh the benefits in this case.

9. Engagement

- 9.1 With regard to the duty set out in paragraphs 186 and 187 of the Framework, any objections that have been raised have been brought to the attention of the applicant's agent who has had the opportunity to respond. The application will have exceeded its original target date due to on-going discussions with the applicant and consultees. It is considered that the duty to be positive and proactive will have been discharged through the Council's efforts to engage with the applicant to seek to address issues as far as possible, whilst being mindful of the need to make a timely decision.

10. Recommendation: **Refuse for the following reasons:**

1. **The proposed development comprises the demolition of a locally listed building within a conservation area which causes substantial harm to the locally listed building (non-designated heritage asset) and less than substantial harm to the Conservation Area (designated heritage asset). Based on the submitted supporting information it is considered that the demolition of the existing building has been inadequately justified by failure to provide building costs and a market appraisal to demonstrate whether there is a viable conversion scheme to retain the existing building, taking account of all reasonable alternative uses. Without this information the harm resulting from the demolition of an important non-designated heritage asset within a Conservation Area has not been justified, and therefore the application does not comply with paragraphs 132, 134 and 135 of the National Planning Policy Framework and is contrary to Policy Banbury 1 and ESD15 of the Cherwell Local Plan 2011-2031 and saved policy C23 of the Cherwell Local Plan 1996.**

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