

**Case Officer:** James Kirkham      **Ward(s):** Banbury Cross And Neithrop

**Applicant:** Kames Capital

**Ward Member(s):** Cllr Hannah Banfield  
Cllr Surinder Dhesi  
Cllr Alastair Milne-Home

**Proposal:** Erection of a building for use as a health and fitness centre within Class D2 and associated physical works

**Committee Date:** 1 September 2016      **Recommendation:** Approve

**Committee Referral:** Major

## 1. Application Site and Locality

- 1.1 The application site is part of an out of town retail park situated to the north-west of Banbury town centre. The retail park contains a number of retail uses including Poundworld, Next, Homebargains and Countrywide in large format retail sheds. It also includes a number of restaurant uses including a Pizza Hut and Burger King. The units are arranged roughly in a U shape around a large shared car park serving the units.
- 1.2 The wider area has a commercial character and appearance and contains a mix of commercial and industrial uses. The area which is subject to the current application is the area to the side of unit 1 which is situated in the south-west corner of the retail park.

## 2. Description of Proposed Development

- 2.1 The current application seeks permission to erect a new unit to the south of unit 1D which is currently occupied by Poundworld.
- 2.2 The new unit would be used for a gym which falls within use class D2. The building would have a mezzanine floor and would provide 1,394m<sup>2</sup> of floor space in total. The applicant has stated the gym would be occupied by Puregym which is a national 'value gym' operator. It would operate 24 hours a day.
- 2.3 The unit would sit flush with the front elevation of unit 1 and would be constructed of materials to match the adjacent units with a colonnade and full height glazing on the front elevation.
- 2.4 Servicing for the unit would be provided to the rear and would be accessed using the shared access with the other units. The proposal intends to utilise the existing car parking facilities serving the retail park however 1 parking space to the front of the unit would be replaced with cycle parking to accommodate 8 cycles.

### 3. Relevant Planning History

- 3.1 There are numerous applications for the retail park as a whole. The most relevant planning history to the current application are:

<u>App Ref</u>	<u>Description</u>	<u>Status</u>
87/00661/N	Erection of retail park and garden centre	Appeal allowed
09/00840/F	Erection of building measuring 697sqm for use within Class A1	Refused
10/00215/F	Erection of building measuring 697 sq m for use within Class A1	Permission
12/01392/F	Extension of Time Limit of 10/00215/F - Erection of building measuring 697 sq m for use within Class A1	Permission
15/01722/F	Erection of a building measuring 697 sq.m for Use within Class A1 (retail).	Permission

### 4. Response to Publicity

- 4.1 The application was publicised by way of neighbour notification letters and a notice displayed near to the site. No comments have been received.

### 5. Response to Consultation

#### Parish/Town Council:

- 5.1 Banbury Town Council: **No objections.**

#### Cherwell District Council:

- 5.2 Planning Policy: **Comments** that the Local Plan seeks to focus new leisure uses in the town centre. Policy SLE2 seeks to require new town centre uses follow the sequential and impact assessment in accordance with the NPPF. Policies Banbury 1 (Banbury Canalside), Banbury 8 (Bolton Road) and Banbury 9 (Spiceball) allocate sites for accommodating town centre uses in the Local Plan.
- 5.3 The application site is in an out of centre location and therefore proposals are inconsistent with the NPPF and the policy approach in the Local Plan in this regard. The application site is not well connected to the town centre. A sequential test will be required for the application but no impact assessment. The proposal is below the impact assessment threshold specified in policy SLE2 of the adopted Local Plan and in the NPPF. The applicant has produced a brief sequential test and it will need to be considered if this sufficient. It considers allocated sites in the Local Plan, however it will need to be determined if these are considered in enough detail including whether information on availability is up to date. The applicant explains that vacant units are not considered as these are not large enough for the application requirements. If this is the case it is acceptable in principle for these not

to be considered further, however all suitable town centre and edge of centre locations should be explored.

- 5.4 The application is for a new building. It is not clear if a new building is required for the health and fitness centre but assuming both new build and conversion are an option the sequential test should consider both. One of the considerations for previous planning permissions on this site was that the proposed store would sell bulky goods which may mean that some more central sites are considered to be less able to accommodate these uses. For a health and fitness centre the suitability of locations would not be restricted by this requirement.
- 5.5 Design will be important in terms of ensuring continuity with the other units on the retail park and where appropriate measures to mitigate the impact of climate change should be implemented in line with the policies set out above.
- 5.6 There are number of vacant units in the town centre. There are no existing fitness centres on the two main retail parks in Banbury and generally these are limited in out of centre locations. Granting planning permission for this fitness centre in an out of centre location without comprehensive justification will unnecessarily threaten town centre vitality and viability.
- 5.7 In principle commercial development and this type of facility is supported by the Local Plan including on the sites allocated. The application documents explain how this is a value gym and its aim is to provide greater accessibility to health and fitness. It seems likely that that the town centre would be particularly suited to this operation, where access to a private car is generally more limited and/or walking and cycling more likely.
- 5.8 The application should be refused if a comprehensive sequential test is not produced and does not effectively rule out other available sites in the town centre/edge of centre locations.
- 5.9 Landscape: **Comment** by requesting a tree survey.
- 5.10 Environmental Protection: **No objection** given the nature of the use and neighbouring uses.
- 5.11 Business Support Unit: **Comments** that the proposal has the potential to secure Business Rates of approximately £52,697 per annum under current arrangements for the Council.

Oxfordshire County Council:

- 5.12 Highways: **No objections** subject to a condition on construction traffic further to the receipt of additional information.

Other External Consultees:

- 5.13 Natural England: **No objection.**

## 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

Cherwell Local Plan 2011 - 2031 Part 1

PSD1 – Presumption in Favour of sustainable development  
SLE2 – Securing Dynamic Town Centres  
SLE4 – Improved Transport and Connections  
ESD1 – Mitigating and Adapting to Climate Change  
ESD3 – Sustainable Construction  
ESD7 - Sustainable Drainage Systems  
ESD10 – Protection and Enhancement of Biodiversity a  
ESD15 - The Character of the Built and Historic Environment  
Policy Banbury 1 (Banbury Canalside)  
Policy Banbury 7 (Banbury Town Centre)  
Policy Banbury 8 (Bolton Road Development Area)  
Policy Banbury 9 (Spiceball Development Area)

Cherwell Local Plan 1996 (Saved Policies)

Policy C28 (Design Considerations)

**6.2 Other Material Planning Considerations:**

National Planning Policy Framework (The Framework) - 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;
- Design, Layout and Appearance;
- Highway
- Other matters

Principle of Development

7.2 The current application seeks permission the construction of a new building to house a new gym. 'Annex 2: Glossary' of the NPPF includes a definition of 'main town centre uses' which includes health and fitness centres. Therefore for the purposes of considering this application, the proposal is for a main town use and it must be considered in this context.

- 7.3 Policy SLE2 of the Cherwell Local Plan Part 1 states new town centre uses will be directed towards Banbury and other town centres. It states the sequential approach will be applied to new town centre uses in accordance with the NPPF to protect the vitality and viability of town centres. The sequential approach requires that applications for main town centre uses, which are not in accordance with the Development Plan, should be located in town centres, then in edge of centre locations and only if suitable sites are not available or suitable should out of centre locations be considered. When considering edge of centre and out of centre locations, preference should be given to accessible sites that are well connected to the town centre. It advises applicants and local planning authorities should demonstrate flexibility on issues such as format and scale in considering the sequential assessment. The National Planning Policy Guidance (NPPG) advises that it is for the applicant to demonstrate compliance with the sequential test and that the test should be proportionate and appropriate for the given proposal.
- 7.4 Policy SLE2 also states that the Council will consider if developments are likely to have a significant adverse impact on centres or planned investment. Paragraph 26 of the NPPF states that in assessing main town centre uses in out of centre locations planning authorities should require an impact assessment if the development is over a proportionate locally set floorspace threshold. In this case this is outlined in Policy SLE2 of the Cherwell Local Plan Part 1 and for Banbury is set at 2000sqm. Therefore as the proposed development is below this threshold an impact assessment is not required.
- 7.5 Paragraph 27 of the NPPF advises that where an application fails to satisfy the sequential test or is likely to have significant adverse impact it should be refused.
- 7.6 The application site is identified as an existing retail park on 5.3 Key Policy Map – Banbury of the Cherwell Local Plan. However it is situated in a ‘out of centre’ location as defined by the NPPF and there is no local plan policy which encourages further development of the existing retail park. As such the applicant needs to demonstrate a sequential approach has been taken to site selection by reviewing sites in the town centre and edge of centre locations for their availability and suitability before considering out of centre sites. The Planning Practice Guidance (PPG) states that *‘The sequential test seeks to deliver the Government’s “town centre first” policy. However as promoting new development on town centre locations can be more expensive and complicated than building elsewhere local planning authorities need to be realistic and flexible in terms of their expectations’*. Therefore viability is also considered to be relevant consideration.
- 7.7 When the application was originally submitted it was not considered that it an adequate sequential assessment had been provided. Therefore additional information in this respect was requested. In considering the sequential approach it is important to take a proportionate approach to the proposal and consider the availability and suitability of more centrally located sites. The main constraints to the applicants search are they are seeking a unit or development site capable of accommodating a unit in the region of 1,400sqm.
- 7.8 In considering the sequential assessment the applicant has reviewed the a number of sites including the following:
- 7.9 *Bolton Road Development Area (Policy Banbury 8)* - This is a 2ha development site and seeks a mixed use development. This will be subject to an SPD to be developed by the Council. The applicant argues the site is not currently available and has a number of occupiers and landowners. There are no existing units that are available which could accommodate the proposal. Furthermore the site is significantly larger than the development proposed and would result in a significant oversupply of land. The redevelopment of the part site for a single unit to be used for gym in the short term could also prejudice the comprehensive redevelopment of the site to meet the policy objectives of Policy Banbury 8.

It is therefore not considered to be available or suitable for the development proposed at the current time.

- 7.10 *Canalside (Policy Banbury 1)* – This is a large development site for a wide mix of uses to the eastern side of the town centre. It is currently occupied by industrial uses and warehouses. There are no sites currently available in this area which could accommodate the use. Furthermore the site is a key development opportunity and the Council are looking to develop a SPD for the site. It would therefore not be ideal to develop it on a piecemeal basis at the current time prior to the adoption of an SPD. Also Policy Banbury 1 indicates the units will be sized and located to attract small specialist leisure uses and niche retailers. Overall it is considered that the site is not available, suitable or viable for the proposed development at the current time.
- 7.11 *Spiceball development site (Banbury Policy 9)* - This site has a resolution to grant outline planning permission to redevelop the site for a range of commercial uses including retail, hotel, cinema, restaurant and cafes (13/01601/OUT). The applicant argues that the site is not available as there is no certainty it will be delivered. However having discussed this matter with the case officer it appears that the proposals are moving forward in a positive manner. However it is understood that none of these units would be available for a gym. The retail floor space is intended to be occupied by the food superstore which is significantly greater in size than the current proposal. Overall it is concluded that the site is not available for the proposed development.
- 7.12 Land at Calthorpe Street was also discounted as it is currently occupied and is not available in a reasonable timeframe.
- 7.13 *South Bar House, South Bar* – This is an existing building located on the corner of Bloxham Road and South Bar. It is located in the town centre boundary. It is currently used for medical purposes in use class D1. The floor space which is available within this building is 751m<sup>2</sup> and this is not large enough for the proposal. Therefore this site is not suitable for the development proposed.
- 7.14 *Blenheim Court, George Street* – This is an office building located on the corner of George Street and Windsor Street. At the current time it would appear that the entire top floor of the building is vacant and would provide 1,244sqm of floor space. However the applicant has stated that this would not be suitable for the proposed use given that it has a number of core stair cases. This along with the requirement for 24 hour access and the lack of dedicated access point to the upper floors make it hard to operate the upper floor as a single unit. They also state that the high specification of the office would not be viable for the proposed use however this is not robustly evidenced so is given limited weight. They have also stated that the proposed use with music, gym equipment and levels of activity would be unsuitable to be located above the existing offices due to noise and disturbance. Furthermore they have stated that the load bearing capacity of the available upper floor is unlikely to be suitable for the intended use and gyms within office buildings generally operate within gyms or at ground floor level. Whilst officers are not convinced by all the arguments put forward by the applicant in respect of this unit, when looked at as a whole the current available space, on balance, is not considered to be suitable for the proposal.
- 7.15 *Crown House, Bridge Street* – This is an empty office building located in a central location. It has been vacant for a number of years. The site is significantly larger than the currently proposed scheme. Numerous planning applications have been approved on the site for residential led schemes and it is understood that the owner of the site will be coming forward with further development proposals for the site. The site is not offered for sale or let. Given these factors the site is considered to be unavailable for the proposal at the current time.

- 7.16 *Unit 2, 20-23 Bridge Street* – This is the building next to Malthouse Walk which was formerly occupied by Peacocks. It is located within the primary shopping frontage where Policy Banbury 7 states A1 and A3 uses will generally be permitted. Given the proposal would be for a D2 use it would conflict with this policy. It is therefore not considered reasonable to argue the site is suitable for the proposal.
- 7.17 *60-62 Broad Street, Banbury* – This is the site of the Former Grand Theatre and is located within the Town Centre. It has been vacant for some time but has planning permission to be redeveloped with retail at the ground floor and residential above. It is currently being marketed for sale. Whilst it is clear there is interest in the site from parties looking to implement the existing planning consent a sale has not been agreed and at the current time it is considered the site is still available. In regard to the suitability of the site the applicant has stated that the site would not be suitable for a number of reasons. These include the fact that the site does not include adequate parking provision on site and could potentially clash with neighbouring uses given it would be open 24 hours a day. Given the town centre location of this site, the neighbouring uses, the low level of activity likely to occur at night time from a gym and the availability of public parking in the locality of the site these are not considered to be significant constraints. They also state that it would be difficult for this site to provide the required floor space in an efficient manner.
- 7.18 However the applicant also argues the site would not be viable given the increased costs associated with converting a building and the heritage constraints associated with the site. Whilst this is acknowledged by officers, beyond general statements and some basic high level costing, which do not appear to be based on a full inspection of the site, there is limited evidence to suggest the applicant has thoroughly explored this. However this property is offered on a freehold basis only and is not available on a leasehold basis. The applicant has stated the proposed operator does not take on the freehold of properties and none of the Pure Gyms existing sites (151 in total) are held on a freehold basis. They state this is common with all other value operator gyms and is an intrinsic part of the established business model for value operator gym and not just specific to the current applicant. Therefore they consider the site is not suitable or available for the development proposed.
- 7.19 In conclusion, on balance, whilst the viability of this site as an alternative has not been demonstrated robustly it is clear there would be constraints, including historic assets, which would make this development more expensive and potentially unviable for a value gym. The suitability of the site is also questionable given the type of use proposed generally requires leasehold buildings rather than the freehold which is available in this case. Furthermore there are questions over whether the unit could provide the level of floor space in an appropriate manner for the proposed use. Therefore in taking a proportionate approach and demonstrating flexibility it is considered that the site is not suitable or available for the proposed development at the current time.
- 7.20 There are not considered to be any other in centre or edge of centre sites which would be available for the proposal at the current time. The application site is located in an 'out of centre' location however it is located within an established commercial retail park. There may be some opportunities for linked trips however this is not considered to be significant given the mix of uses. It is also served by a regular bus service and is therefore relatively accessible. Therefore on the basis of the information available it is considered the sequential test is passed.
- 7.21 In relation to the impact on the town centre, as the proposed development is below the locally set threshold for an impact assessment there is no requirement for the applicant to

submit one. The scale of the proposals is very unlikely to result in a significant adverse impact on the town centre which has a limited range of competing uses.

#### Design, layout and appearance

- 7.22 Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 states new development will be expected to complement and enhance the character of its context through sensitive siting and layout and states all development will be required to meet high design standards. It goes on to state development should respect the form, scale and massing of buildings in the surroundings. Development should be designed to integrate with existing streets and buildings clearly configured to create defined active public frontages. Saved Policy C28 and C30 of the Local Plan also seek to ensure high quality development. The NPPF also seeks to ensure high quality development and paragraph 58 and 60 states development proposals should respond to the local character and surroundings and reinforce local distinctiveness. Paragraph 64 states development should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. Policy ESD10 seeks to enhance the natural environment and state the protection of trees will be encouraged and the Council will aim to increase the number of trees in the district.
- 7.23 In the current application the proposed development would be designed to match the existing retail units on the retail park in terms of scale, form and materials. This is considered to be an acceptable approach considering that it will be seen as an extension to the terrace of retail units. It is therefore considered to be acceptable in design terms.
- 7.24 The width of the units remains very similar to the previous consents on the site for a bulky goods retail unit. In the previous applications concerns were raised with regard to the impact of the building on the landscaping belt between the site and Ruscote Avenue. This provides an important screen to soften the building. Prior to the 2010 application on the site a significant number of trees were removed and it was concluded that the proposal would be acceptable subject to a landscaping scheme to strengthen this landscaping belt and root protection measures to protect the trees. The proposed development would be located wholly on the concrete yard to the side of the existing unit and remains very similar to the previous approved scheme which remains extant. Whilst it is noted some of the overhanging branches from this landscaping belt would need to be cut back the vast majority of the area will be unaffected as it would not extend beyond the existing retaining wall which separates the application site from this landscaping belt. Therefore subject to conditions this remains acceptable.

#### Highways

- 7.25 Policy SLE4 of the Local Plan states all development should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. It goes on to state that development which is not suitable for the roads that serve the development and which have severe traffic impact will not be supported.
- 7.26 The proposed development would utilise the existing car parking serving the site. 1 parking space would be lost to the front of the unit and 8 cycle parking spaces would be located on it. This would mean the retail park would have 598 car parking spaces. The previous applications on the site for 687m<sup>2</sup> of retail floor space have been approved on a similar basis. OCC Highways have raised no objection to the level parking serving the site.
- 7.27 OCC Highways had originally raised concerns over the potential traffic generation from the proposed development and considered that the number of linked trips would be limited. They therefore requested further information regarding trip generation for the proposal. The applicant has provided information to clarify that the approved scheme would generate more traffic in peak hours than the D2 use and that the peak additional vehicle movements for the



proposed use would be outside of the local highway peak. They have also provided information showing the level of vehicles entering and leaving the retail parking which demonstrates the level of activity is lower during the peak periods for the proposed use. Therefore the highway impacts of the development are considered to be acceptable.

#### Other matters

- 7.28 The NPPF states that significant weight should be placed on the need to support economic growth. The proposed development would result in the short term economic benefits associated with construction and the applicant has predicted that the proposal would generate in the region of 14 FTE jobs. These factors weigh in favour of the proposal.
- 7.29 Policy ESD3 is a new consideration and states all new non-residential development will be expected to meet a least BREEAM 'Very Good' with immediate effect. The demonstration of the achievement of this standard should be set out in an Energy Statement. This can be controlled through a planning condition.
- 7.30 The current application would be a 24 hour operation however it is a significant distance from any residential properties and the surrounding uses are not considered to be sensitive to noise and disturbance at anti-social hours being commercial in character.

### **8. Conclusion**

- 8.1 The proposed development would be a main town centre use in an out of centre location. The applicant has undertaken a sequential approach and on balance has demonstrated that there would be not more centrally located site that is available, suitable and viable to accommodate the development within a reasonable time frame. The design of the proposal will be in keeping with the existing properties at the retail park. The existing parking serving the site would be adequate to accommodate the proposed use as the peak times for a gym are likely to be different to the existing retail uses. Overall the development is considered to constitute sustainable development and it is recommended that planning permission be granted.

### **9. Recommendation**

#### **Approve, subject to: Conditions**

1 The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2 Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the details provided by the following plans and documents: Application Form, Location Plan, drawing numbers 14358-102, 14358-103 and 14358-104.

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

3 The materials to be used in the new development shall be as specified in the application hereby approved. There shall be no variation of these materials without the prior written consent of the Local Planning Authority.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the Adopted Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

4 The development hereby permitted shall be constructed to meet at least BREEAM 'Very Good' standard.

Reason: In order to comply with Policy ESD3: Sustainable Construction of the Cherwell Local Plan Part 1.

5 Prior to the first occupation of the development hereby permitted full details of the location, type, design, and appearance of the proposed cycle parking serving the dwellings shall be submitted and approved in writing by the local planning authority. The cycle parking shall be provided in accordance with the approved details prior to the first occupation of any part of the development.

Reason: To ensure the development provides opportunities for sustainable modes of transport in accordance with the NPPF.

6 All construction traffic serving the development shall enter and leave the site through the delivery and service access and not via the general visitor parking.

Reason: In the interests of highway safety and to safeguard the amenities of the occupants of the adjacent units during the construction period and to comply with Policy ENV1 of the adopted Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

7 The use of the building shall be confined to the use as a gym as hereby permitted and for no other purpose including any other use within Use Class D2 of the Town and Country Planning (Use Class) Order (as amended) 1987.

Reason: To enable the Local Planning Authority to assess the acceptability impact of any future proposals for change of use in accordance with SLE2 and SLE4 of the Cherwell Local Plan Part 1 and advice in the NPPF.

8 No works or development shall take place until a tree survey, impact statement and arboricultural method statements (AMS) and details of any reinforcing landscaping has been submitted and agreed in writing with the Local Planning Authority. The development shall

thereafter be carried out in accordance with the approved details and the landscaping shall be provided within a specified timeframe.

Reason - To ensure the continued health of retained trees and in the interests of the visual amenity of the area, to ensure the integration of the development in to the existing landscape and to comply with Policy ESD10 of the Cherwell Local Plan Part 1 and Saved Policy C28 of the Cherwell Local Plan 1996.

9 The D2 unit hereby permitted shall not be subdivided without the prior written approval of the Local Planning Authority.

Reason: In order to minimise the impact on the vitality and viability of Banbury Town Centre and to comply with advice in the NPPF.

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