

**Part OS Parcels 4200 And 1300 Land Between New
Banbury Daventry Road And M40
Street From Banbury To Williamscoth
Banbury**

17/01044/F

Applicant: Monte Blackburn

Proposal: Development of land to the north east of Junction 11 of the M40 Banbury, to provide a 22,150sqm industrial building (Class B8); two office buildings of 3716sqm each (Class B1); Motorway Services Area with amenity building, Petrol Filling Station (with canopy, fuel pump islands, ancillary convenience store and food to go outlet) and HGV Parking; creation of a new vehicular accesses off the A361 together with associated alterations to the highway; parking and circulation; landscaping, drainage and associated works.

Ward: Banbury Grimsbury And Hightown

Councillors: Cllr Andrew Beere
Cllr Claire Bell
Cllr Shaida Hussain

Reason for Referral: Major Development

Target Date: 10 August 2017

Committee Date: 21 June 2018

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site comprises approximately 12.5ha of flat agricultural land located to the east of the M40 and adjacent to Junction 11. It is comprised of cut grassland divided into a four parcels of smaller fields that are delineated by hedgerows and currently put to livestock farming. A thick and well established hedgerow forms the boundary with the M40 slip road and the J11 roundabout before narrowing and running all along the boundary with the A361. There are a couple of existing agricultural accesses to the site off the A361 resulting in small breaks in the hedgerow. Beyond the A361 lies open countryside which steadily rises up towards the nearest settlements of Chacombe and Middleton Cheney within South Northamptonshire District. To the north of the site lies the River Cherwell flood alleviation scheme and, beyond that, the Cherwell Country Park. A public footpath passes alongside the River Cherwell through the M40 underpass and onwards into the countryside. The Banbury Gateway Shopping Park lies to the west on the opposite side of the M40.
- 1.2. The application site is allocated for employment development through Policy Banbury 15 of the Cherwell Local Plan 2011-2031 Part 1 to deliver approximately 1000 jobs. Beyond that the site is not covered by any local policy or statutory environmental designations though a small section at the north of the site is identified to be at high risk of fluvial flooding.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. The application as originally submitted proposed the creation of a new motorway services area (including petrol filling station, amenity building and car/coach/caravan/HGV parking) together with the erection of a 150 bedroom hotel, 2 x three storey office buildings (totalling 7,740sqm) and a large warehouse building (23,895sqm) together with associated hard and soft landscaping. A new three-arm roundabout was proposed to enable vehicular access to the development from the A361 as well as a connection to the existing public footpath to enable pedestrians to access the development via Banbury Gateway.
- 2.2. The application proposals have been updated and amended twice during the course of assessing the application. The most significant change is the inclusion of a proposed second vehicular access to the site in the form of a priority junction which would serve only the warehouse and office elements of the scheme. The proposed motorway services area would still be accessed solely from the previously proposed three-arm roundabout so that there is no vehicular connectivity between the two sections of the site. The current proposals have also seen the hotel removed from the scheme together with alterations to the scale and siting of the office and warehouse buildings. The parking facilities and layout of the proposed motorway services area have also been amended in order to provide, in particular, additional HGV parking. The proposals also necessitate changes to the alignment of a section of the A361 in order to construct the new roundabout together with a number of off-site highway improvement schemes in order to mitigate the effects of additional traffic generation and some of these works are significant including the creation of additional lanes on the M40 off-slips.
- 2.3. A number of updated supporting assessments have been submitted to accompany the amendments to the proposals including a series of updates to the Transport Assessment, Ecological Appraisal and Landscape and Visual Impact Assessment. All of the amendments together with the supporting documentation have been subject to public consultation and are available to view via the online planning register.
- 2.4. Proposals similar to those within this application have previously been the subject of a negative screening opinion issued by the Council. As such, there is no reason to conclude that the environmental effects of the proposed development would be likely to be significant such that the undertaking of an Environmental Impact Assessment would be necessary. No Environmental Statement has therefore been submitted alongside this planning application and so the proposals do not amount to EIA development.
- 2.5. The application is made in full rather than in outline and so Members must consider the proposals exactly as they are shown in the submitted plans, drawings and supporting assessments.

3. RELEVANT PLANNING HISTORY

- 3.1. There is no planning history on the site that is directly relevant to the proposal. An EIA screening opinion was however issued by the Council in advance of the receipt of the planning application in relation to a similar scale, type and nature of proposal. This concluded that the proposals did not constitute EIA development and so an Environmental Statement did not need to accompany a planning application.

4. PRE-APPLICATION DISCUSSIONS

- 4.1. A pre-application enquiry was submitted to the Council under reference 17/00013/PREAPP for a similar proposal albeit one that included a 150 bedroom hotel and a public house. Officers made a number of comments including about the potential for significant traffic generation as well as suggestions about amendments to the scale, siting and layout of buildings within the development as well as raised the need for clear and convincing justification for what would be a departure from the site allocation policy (Banbury 15).

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near to the site, by advertisement in the local newspaper, and by letters sent to all properties immediately surrounding the application site that the Council has been able to identify from its records. The final date for comments was 03.05.2018, although comments received after this date and before finalising this report have also been taken into account.

- 5.2. Over 150 third party representations have been received with almost all of these raising objections to the proposals. The same parties have sometimes made 2-3 objections as part of re-consultation on amended proposals and so the actual number of individuals/organisations having formally objected to the proposals is significantly less than that figure with 35 third party representations received in relation to the latest proposals. The following summarises the comments raised by third parties as part of the publicity of the current amended proposals:

- There is no need for another motorway service station in this location given that there is already one at junction 10 of the M40 and another just beyond junction 12;
- The proposals are contrary to the Council's allocation for the site in the Local Plan;
- The proposals would add major traffic congestion at the M40 junction and increase traffic on surrounding roads. Only minor traffic problems causes major queuing on surrounding roads;
- The site forms an important gap between Banbury and the South Northamptonshire villages;
- The proposals would represent more ugly sprawl of Banbury;
- The site is not very accessible by non-car modes and so almost everyone will drive to the development;
- The proposals will not deliver the 1000 jobs required by Policy Banbury 15 now that the hotel has been removed and the floor space of other buildings has reduced;
- A service station is not among the permitted uses for the site as set out in Policy Banbury 15 of the Local Plan;
- The M40 J11 roundabout is already heavily used and there could be thousands of additional vehicle movements every day as a result of these proposals;
- The amended proposals do not overcome the in principle concerns about a motorway service station in this location and the traffic that it would generate;
- The construction of HS2 will bring up to 1000 HGV movements per day and this will coincide with the opening of this development so that the road network will be unable to cope;
- The proposals would cause so much traffic congestion that Banbury will be abandoned as a shopping and social destination for many that would access it via the roundabout at M40 J11;
- The proposals would significantly increase traffic and therefore noise and air pollution to the detriment of those that live along the roads nearby;

- Banbury needs economic development and these proposals would provide jobs as well as additional parking for Banbury Gateway;
- The proposals would increase traffic, particularly HGVs, that pass through nearby villages including, in particular, Farthinghoe;
- Hennef Way will become further congested and is already one of the most polluted roads in Oxfordshire. It is highly congested and this increase in traffic compounds the background growth that will only serve to weaken the existing businesses;
- There are brownfield sites within Banbury which should be prioritised for development to reduce the impact on the environment and support land values within the town itself which would in turn encourage private sector investment;
- The proposed development will increase journey times for the residents and businesses to the east of the M40. This will in turn discourage new residents harming the area's long term economic potential;
- This development would not positively impact anything or anyone commuting through and living around Banbury;
- Together with HGV traffic associated with the construction of HS2, the proposed development would cause significant traffic disturbance to the area and be incredibly disruptive for the people in the villages of Cropredy, Wardington and Farthinghoe;
- The proposals would set a precedent for further development to the east side of the M40 and may only be the 'thin end of the wedge';
- The proposals would cut into a landscape that has been largely untouched and in its place propose a set of ugly buildings;
- There is already a Premier Inn, Costa drive-through and service station at Ermont Way and shops at Banbury Gateway so there is no need for any additional motorist facilities in this location;
- The Local Plan through Policy Banbury 15 seeks "knowledge based industry and advanced engineering" on this site, a motorway service station hardly complies with this;
- The amendments made are solely to respond to Highways England's requirements for MSA signage and in no way answer the overwhelmingly negative criticisms of local residents expressed over the past 9 months;
- The new access for the warehouse/office facilities is solely intended to meet the objection of Highways England (HE) regarding shared access to the site for different uses. It is clearly an ill-prepared proposal. All it means is that 500+ movements per day for workers at the site together with lorry movements will be trying to enter the A361 without the benefit of either traffic lights or a roundabout. The problems for traffic trying to turn right at busy times from these facilities will have the effect of inducing such traffic to turn left to find routes through local villages. Even where traffic attempts the right turn this introduces another impediment and hazard to traffic flow on the A361. The new access will have no beneficial impact on overall traffic flow;
- Apart from the statement that there will be an S106 financial contribution towards public transport enhancements (presumably buses serving the site), the revised application does not give any details of this enhancement and from our latest knowledge of Stagecoach's plans there is no immediate intention to change the current timetable of one bus per hour via Chacombe on weekdays and no service on Sunday;
- 10% of the jobs provided on the site (110) would be generated from a development (the MSA) that creates 95% of the traffic which is clearly not a benefit either socially or economically;
- After one year the applicants have arbitrarily changed the parameters for deriving the traffic assessments in the Transport Assessment by now unilaterally introducing a turn-in rate of 'approximately half of an on-line MSA'.

They claim to base this on Highways England TRICS flow data and to have agreement with Highways England on their validity. Perhaps the applicants and Highways England could share in the public domain the data on which their new assumptions are made so that we can all make a judgement on their veracity/validity (including the local authorities who have responsibility for the local non-motorway highways impacted by the application and who do not appear from the text to have been privy to this data either);

- The applicant's Transport Assessment suggests that between 90-100% saturation of a junction is acceptable. Whatever the level of new traffic in the vicinity of the junction it can only exacerbate an already unsatisfactory situation. The flow limiting factor on the junction is that there are only two carriageways across the M40. This will not change under the proposal;
- The 'improvements' proposed to the underpass are cosmetic only and will not materially improve it so that its use is encouraged for pedestrians;
- The proposals involve building near to the flood alleviation channel exposing others further downstream to increased risk of flooding;
- The proposals would permanently blight a pleasant rural land and leave the area east of the M40 ripe for further urbanisation.

5.3 Both Moto and Extra operate motorway service areas across the UK and are therefore competitors of Eurogarages. They have both raised objections to the latest proposals and have cited the following concerns:

- The proposals include no dedicated motorcycle parking as required for an MSA by DfT Circular 02/2013 and the number of coach parking spaces falls slightly below the standard set out in the Circular;
- The Transport Assessment is based on August 2016 peak traffic flows and so is now out of date. If based on the most up-to-date data (August 2017) then traffic flows would be 3.5% higher and there should be a consequent increase in parking numbers;
- The combining of HGV parking and coach parking is unusual and places coach passengers a long way from the amenities with the likelihood that they will mingle with cars in the car park and requires crossing the access/egress roads in two places;
- Coaches should preferably park in a forward gear so that passengers step out at the front of the coach with sufficient space to accommodate at least 50 passengers per coach. The coach parking spaces are too narrow;
- There is no direct access to the filling station from the HGV area which requires HGVs to use the access road to the car park which has to operate as a two-way road;
- There is no fence between the HGV parking area for the MSA and the proposed offices which is a security risk;
- If the application proposed an employment park as was anticipated within the Local Plan then the whole site could be served by just one point of access;
- The proposals include a level of car parking for the office/warehouse development that significantly exceeds the Council's parking standards and the applicants should justify this approach;
- Swept path analysis based on a 24.4m long vehicle typically used to transport a turbine blade demonstrates that the internal roads are too constrained to accommodate such a vehicle and that a vehicle carrying an abnormal load would have to manoeuvre through the HGV filling area to reach its parking space. There is insufficient space to access it properly meaning that effectively there is no parking for an abnormal load vehicle contrary to national policy in Circular 02/2013;
- The inclusion of an MSA within the proposals is contrary to the Local Plan allocation for the site and would undermine delivery of Banbury 15;

- No weight can be attributed to the safety and welfare need for an MSA in this location as no such need exists having regard to criteria set out in national transport policy in Circular 02/2013;
- The MSA proposed does not meet the mandatory requirements for signage from the motorway as set out in Circular 02/2013;
- Employment provided by an MSA is at the lower end of the skills spectrum and as such is not a “manufacturing, high performance or logistics” type of development as provided for through Policy Banbury 15. As such, it does not reflect the employment and economic reasons for which this site was allocated;
- An MSA does not provide a high density of jobs and will put at risk the total number of jobs expected and required from the site to meet the Local Plan objectives;
- The Design and Access Statement and landscape assessment submitted by the applicant omit to consider the impact of the 24/7, 365 days per year activity levels associated with the MSA use. The levels of activity associated with MSAs typically exceed that associated with the type of employment uses envisaged for this site. Levels of activity on employment sites generally drop off significantly during evenings, weekends and bank holidays. These increased levels of activity associated with an MSA can hardly be said to support “a successful transition between town and country environments” as required by Policy Banbury 15;
- The proposed MSA has been ‘crammed’ onto the site with little or no regard for the impact this has on other uses on the site or the design requirements for the site. There is very little green space proposed and little space for people to walk around within the MSA;
- There are likely to be numerous conflicts between pedestrians and traffic flows due to the cramped site layout;
- The applicant’s Transport Assessment underestimates the projected ‘turn-in rates’ of traffic from the M40 to the MSA. Whilst a figure of 6% is considered reasonable for a weekday, a figure of 10% is more realistic at weekends particularly as traffic flows at J11 of the M40 are higher in the Saturday peak than in the weekday peak hours. The impacts on existing junctions, particularly the roundabout of J11 M40 will therefore experience severe congestion to a level greater than modelled by the applicant;
- The level of car parking proposed for the offices falls short of the Council’s maximum parking standards and it should be demonstrated that sufficient parking is provided for the office development to ensure that office users do not park in the MSA thereby reducing parking capacity for motorists leading to congestion within the MSA and potentially spilling out onto the highway network;
- The applicant’s proposed highway mitigation works to alleviate some of the pressure caused by increased traffic flows have not been subject to a road safety audit and cannot be assumed to be deliverable;
- The proposed access to the office/warehouse elements on the site has been based on observed speeds surveyed close to J11 of the M40 and not the prevailing speed limit at the location of the access itself and so it could therefore be unsafe;
- The Transport Assessment indicates that there would be significant delays on the M40 off-slips at J11 in the peak hours, sometimes in excess of 5 minutes;
- The LINSIG modelling of J11 of the M40 is inadequate but still shows that J11 of the M40 will operate over capacity. It also does not present a comparison including the ‘with development’ scenario and without this comparison of the magnitude of the impacts it is not possible to robustly assess severity of impacts.

- 5.4 Other representations have been received by third party groups and these are summarised below:

CPRE Oxfordshire – The proposals do not conform with the site's allocation in the Local Plan; there is no identified need for a further motorway services area in this location; the proposals would generate a totally unacceptable increase in traffic at the M40 J11 roundabout; and the proposals would result in the loss of greenfield land and have an adverse impact on the landscape which would be exacerbated by the 24/7 nature of the operations.

Banbury & District Chamber of Commerce – Whilst the proposals may be beneficial to the economic growth of the area the site has never been proposed by the Council as being for a motorway services. This could end up as 'planning creep' with more facilities ending up as out of town retail. There is concern that we should be aiming to achieve high-end employment opportunities focussed on the long term prosperity of the town. The planning authority should not accede too readily to a scheme which, when scrutinised, is a relatively weak proposal.

It is also questionable as to whether there is a need for a motorway services in this location given the existing services at J10 and just beyond J12. The proposals are likely to significantly increase traffic and cause unacceptable levels of congestion which could adversely affect access to other businesses nearby on Wildmere Industrial Estate and The Banbury Gateway Retail Park. It is also likely to have further ramifications for town centre traffic.

Banbury Civic Society – Motorway service stations work best when they are served by direct run-off and run-on dedicated slip roads. This proposal utilises the existing gyratory which is already heavily used by traffic. If this scheme were to go ahead a major reconstruction of the existing gyratory could be necessary in order to cope with the additional traffic movements and it is hoped the cost of this would fall on the development rather than by the local community.

A new service station is not thought to be necessary in this location given the short distances to other service stations. The employment prospects claimed by the development also appear to be extravagant. Banbury desperately needs new employment in the middle and upper salary brackets as there is already enough of the lower skilled and lower end salary jobs. The District Local Plan envisages the realisation of the Canalside development which will, inevitably, displace a significant number of existing enterprises with their associated employment. This Banbury 15 is the one remaining undeveloped site of any extent that could be utilised for such relocations and therefore we believe the District Council will be negating its own objectives if this proposal is allowed to proceed.

- 5.5 The Rt. Hon. Andrea Leadsom MP has also made a number of representations on the application and raised concerns in line with those made by CPRE Oxfordshire. This references concern about the lack of need for a motorway services area in this location and that such a use does not accord with the development allocated for the site through the Local Plan. The adverse impact on the landscape including through light pollution is also raised together with the impact of a significant increase in traffic arising from the development.
- 5.6 The third party comments received can be viewed in full on the Council's website, via the online Planning Register.

6. RESPONSE TO CONSULTATION

- 6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

Parish/Town Councils

Banbury Town Council – Objection. The access arrangements proposed are unsatisfactory and there are concerns surrounding the highway infrastructure needs. The proposed MSA is beyond the scope of Policy Banbury 15 and it is unclear how the number and type of jobs expected through the policy would be achieved.

Bourton Parish Council – Objection. A service station is not amongst the permitted uses in the Local Plan for this site and neither does it change the fact that a service station is not needed at J11 M40. It is an entirely unnecessary development that would have significant environmental impact by generating noise, air and light pollution as well as be visible from Little Bourton. In addition, the motorway roundabout is already congested and there is alarm at the thought that there would be a significant number of extra vehicle movements each day particularly bearing in mind the thousands of new homes being built in and around Banbury in addition to HS2 construction traffic.

Wardington Parish Council – Objection. The site is allocated in the Local Plan for advanced engineering and knowledge based industries. The alternative motorway services now proposed will give rise to problems not foreseen as part of the allocation. The revised proposals are a cynical attempt to make amendments to counter objection which in no way address the lack of need for a development of this type.

Farthinghoe Parish Council – Objection. The proposals would result in even greater traffic pressure at Farthinghoe as the village acts as a pinch point for traffic travelling between Banbury and Brackley. There is inadequate infrastructure in place to support the proposed development and the applicant has not considered the Farthinghoe predicament. There seems to be a lack of interaction between the relevant highway and planning authorities across the county boundary when considering development that would have significant effects on either side of the boundary. The Parish Council has grave doubts about the need for a J11 service area given the existing services at J10 and just beyond J12 of the M40.

Overthorpe Parish Council – Objection. The proposal is contrary to Cherwell's Local Plan allocation for the site given that a motorway services facility takes up a dominant area of the site. The proposals also fail to demonstrate that there will be adequate infrastructure in place to support the development contrary to the NPPF. The proposals would cause local villages to suffer increased rat running by drivers avoiding the inevitable congestion on the M40 J11 roundabout which would adversely affect quality of life for residents. The proposals also fail to take due account of HS2 construction traffic and, due to the inclusion of significant lorry parking facilities, will encourage HGV drivers to the site along the A422 and B4525 as short cuts which could not cope with that volume of HGV traffic.

Middleton Cheney Parish Council – Objection. The site is ill considered for this development and the proposals would result in the loss of greenfield land that would diminish striking views and be prominent from most angles. The M40 has acted as a border between Oxfordshire and Northamptonshire and whilst the design of the development might be able to be improved through revised proposals it could not remedy the wider landscape impacts associated with the site and the unavoidable

impact on traffic on the local roads. The Parish Council is aware that there are already functioning service stations both north and south of this location and there is already a petrol station, hotel and food/retail outlets just off J11. The proposals would have a significant effect on traffic congestion which would only increase as a result of HS2 construction works and would have an undesirable impact on the village. Finally, Banbury's small retail outlets are already under pressure and finding it difficult to trade - any increased congestion will not help matters as it will dissuade commuting into Banbury from surrounding villages.

Chacombe Parish Council – Objection. The application proposes development on the site that does not fall within the Class B1, B2 or B8 uses allowed on the site through Policy Banbury 15 of the Local Plan. The policy also adds that the site should assist in providing for advanced engineering and knowledge based industries. A motorway service station is not a knowledge based industry and, in any event, there is no need for it given that there are already motorway services at J10 and just beyond J12. The applicant has not made any meaningful analysis of the impact of the proposed service station on local traffic. The improvements proposed to help mitigate the additional traffic are wholly inadequate to manage such an increase and will only cause further backing up of traffic onto the J11 roundabout and down onto the slip roads and also into Hennef Way. To add thousands of additional vehicle movements to the already busy J11 roundabout will turn what is an existing congestion problem into something critical. This congestion will increase the probability of the use of Chacombe as a rat run to access the A422 via Middleton Cheney – a road that is not suitable for an increase in traffic. As the approaches to J11 on the A361 and A422 become even more congested, traffic is highly likely to be diverted via Overthorpe and Cropredy to use the other bridges over the M40 with both of these roads unsuitable for increased traffic.

Cherwell District Council (Internal Consultees)

Business Support Unit – The proposals as originally submitted had the potential to generate Business Rates of £1,022,400 under current arrangements for the Council.

Environmental Protection – No objections in principle with respect to noise as the proposed use and location of the site mean it is unlikely generate a noise nuisance given the lack of residential receptors in the immediate vicinity

There is no evidence that the site is contaminated and the uses proposed are not sensitive. As such it is not necessary for a pre-determination contaminated land assessment to be carried out and could be secured by condition.

With respect to air quality, the assessment methodology used in the applicant's Air Quality Assessment is satisfactory. The assessment shows that there will be an increase in nitrogen dioxide concentrations at some receptor locations, including within the existing Hennef Way Air Quality Management Area, however this should not necessarily preclude development. In such circumstances we would expect the environmental impact of any changes in pollutant emissions to be quantified by means of an environmental damage cost calculation and appropriate mitigation measures put forward to off-set this.

An environmental damage cost calculation has been carried out (section 5) and mitigation measures proposed (section 6) in the Air Quality Assessment. Provided the mitigation measures are appropriate and deliverable to meet the environmental damage cost calculation there would be no objection to the application on air quality grounds subject to the mitigation measures outlined in section 6 of the report being secured and implemented. The proposed mitigation measures might need to be

agreed with County Highways or other parties to confirm that they are appropriate and deliverable for this scheme or if other measures should be considered.

Landscape Services - The plans are not hugely different from the first submission. The Country Park car park is far too small at 10 spaces. It needs to be a minimum of 28.

Although they have provided montages from the NW there are no impressions from the most visible side of the development to the east. This faces open countryside and a deep effective screen is needed here. The LVIA was assessed assuming that hedges and trees would be retained. Since most of them are proposed for removal the assessment is not accurate and requires re-assessing.

The tree report identifies that most of the existing vegetation on site will be removed under these proposals. Category A and B trees are proposed for removal. They should be accommodated within the design. Only 2 small stretches of hedge row are to remain. All the hedge on the visible east side are proposed for removal. This is not acceptable and proves that the site is being overdeveloped. Compare this with Cherwell Valley services which is not visible due to the generous landscaping which was planted. New planting will not mitigate for the loss of good trees and hedges for a long time.

The site needs to have a large amount of new planting to integrate it into the existing landscape. There is no room for this with the current layout. The proposal should be refused in its current form as the development proposed would not be sensitively designed for its context and would be far too prominent in the landscape. There is clearly inadequate landscaping and screening.

Ecology

Response to original submission:

Biodiversity Impact Assessment (BIA)

The BIA completed for the site appears to contain an appropriate representation of habitats within the site. However, I have made some changes to the proposed habitats and please see attached revised BIA calculator to include these changes (noted in the comments column). These include number of suggested amendments and seek clarification to ensure that the proposed habitats and their target conditions are realistically achievable within the landscaping plan. The target grassland habitats and their timescales for achievement depends not only on seeding but also subsequent management. This will need to be secured within a Landscape and Ecological Management Plan. Happy to discuss these changes and review an updated version.

- As previously noted, the existing area of tall ruderal habitat is recorded as possible NERC Act Section 41 Priority Grassland habitat on the CDC Habitat Land Use mapping dataset. Has this area been re-surveyed at the appropriate time of year and can it be confirmed this is tall ruderal?
- It is not very clear, but it does appear that there is an area of existing semi-improved grassland road verge on the A361 falls within the red line boundary and will be impacted by the proposed access. If this is the case this should also be included as part of the 'existing habitats' which will affect the overall impact score.
- Has the soil type been tested for suitability to create unimproved grassland? It is not considered achievable to create unimproved grassland in 5 years. Generally

as it is unlikely to be achievable within development sites, I would suggest the creation of semi-improved grassland in good condition in 15 years is more realistically achievable.

- I have split the two types of grassland proposed “low growing species rich grass areas” to amenity grassland in good condition on the BIA due to its proposed short cut management. This could be updated if this can realistically be managed sympathetically.
- Linear impact assessment: It does not appear that the species-poor defunct hedgerow been included on the existing habitat table and this should be amended if so. The proposed hedgerow creation length of 1.1km should also be confirmed, as from my calculations using the layout plan showing the new hedgerow along the northern and eastern boundaries I suggest this should be c.800m rather than 1.1km.

Planning policy changes promoted within the National Planning Policy Framework (NPPF) include the guiding principle that all developments should result in a biodiversity gain. It appears from the plans and through the BIA calculation that a biodiversity loss is predicted from this development. As biodiversity loss is contrary to NPPF we recommend refusal/ deferral until such matters are addressed. Confirmation of the acceptance of this principle will be required prior to determination of this application. If the applicant is willing to agree to the principle of biodiversity offsetting, the creation of the appropriate number of biodiversity units loss (the habitat biodiversity impact score) could be secured through a S106 agreement.

Arboricultural survey - The Arboricultural Impact Assessment identified a group of mature native black poplar, *Populus nigra* within the hedgerow which are proposed to be removed (T1, T2 and G2). There is a discrepancy with the ecological survey which identifies these being hybrid poplars. The native black poplar is a rare species in the UK, although it is not a UK or Local Biodiversity Action Plan priority or notable species. As such I would recommend that clarification of which species is present should be clarified. If native black poplar are present and removal is required, I would recommend they are replaced in the landscaping scheme by native black poplar and this can be provided by condition of any approval granted.

Bat impact assessment - The arboriculture report identifies a number of trees with potential bat roosting features (see Tree Survey Schedule) which are proposed to be removed. This is a discrepancy with the ecological survey report which did not identify any trees with bat roost potential. I would recommend that clarification of the bat roost potential of the trees identified in the tree report is therefore provided by the ecologist to clarify their bat roosting potential prior to determination of the application. Further activity surveys or climbing inspections may be required to be secured by condition. The surveys should be undertaken in line with the Bat Conservation Trust guidelines (2016). Should a bat roost be present, suitable mitigation measures will be required which can be achieved by way of bat boxes/bat tubes within the proposed development. Appropriate mitigation appears to be achievable for crevice dwelling species within buildings on site.

Lighting – I understand that new lighting is proposed under the motorway underpass. Although I understand that low level lighting is proposed rather than uplighting, there is little information provided and an ecological assessment of the potential impact of the location and type of lighting on bats will be required. If a bat roost is present within the bridge the lighting may have an impact on a bat roost and therefore an initial bat survey of the bridge should also be carried out prior to

determination. An assessment of the potential impact of lighting on otter should also be provided as part of the ecological baseline to ensure protected species impacts have been determined prior to determination of the application. There are a number of otter records on the River Cherwell and the Oxford Canal within the vicinity of the application site. The proposed lighting scheme of the site should be designed to be sensitive to avoid impacting on wildlife and a detailed lighting scheme submitted by condition of any approval granted.

Provided that the above points are addressed at this stage of the application, I would recommend that full details of a Landscape and Ecological Management Plan (LEMP) and a Construction Ecological Management Plan (CEMP) are secured by condition of any approval granted. Please let me know if you need any further information and I'm happy to discuss with the applicant's ecologist.

Response to latest submission:

The ecological assessment in general addresses most of the concerns originally raised. No bats were found under the bridge but sensitive lighting will need to remain an important issue given the likely importance of the river to commuting bats. The assessment of the trees on site is fine and inclusion of a couple of black poplars is welcome.

They state that the rerun BIA calculation now comes out as -1.58 loss as compared to the previous total which was over -4. This is because they have just adjusted the estimated time taken to reach a good condition for semi-improved grassland back to 5 years which was stated as unrealistic. If this is re-adjusted back to 15 years as recommended by Warwickshire County Council who have considerable experience in this then the figure is once more a loss of 4.54 which would need to be addressed to be acceptable. There is not a botanical survey of the parcel of land to the East of the site which records indicate could potentially be Priority grassland.

Planning Policy

The application site comprises most of the land allocated for mixed employment generating development (B1, B2 and B8 uses) in the adopted Cherwell Local Plan 2015 - Policy Banbury 15. The policy seeks the delivery of approximately 1000 jobs.

- ☐ Policy Banbury 15 states that a variety of employment types will be sought to reflect the need for diversity and resilience in the local economy expressed in the Economic Development Strategy.
- ☐ The policy requires "...a high quality commercial District for the east of Banbury..."
- ☐ The 2015 Local Plan allocates additional employment land (B use classes) to help secure sustainable economic growth for the period to 2031.
- ☐ The supporting text for Policy Banbury 15 emphasises that the intention is to deliver land for economic development in the interest of delivering jobs and investment in a highly sustainable location.
- ☐ Policy SLE1 states that employment development on new sites allocated in the Local Plan will be the type of employment development specified within each site policy.
- ☐ The adopted Banbury Masterplan 2016 states that an improvement in economic activity is important to the long term sustainable development of Banbury.
- ☐ The application proposes 23,895 sq.m. of B8 uses (storage and distribution) and 7,740 of B1(a) office use. Contrary to policy, no B2 (general industrial) uses are proposed.
- ☐ Policy SLE1 states that on such sites, other types of employment development (B use class) will be considered in conjunction with the [required] uses if it makes

the site viable. As no B2 uses are proposed, a viability assessment will need to be considered for the alternative B uses.

- The proposed hotel and motorway service area (including petrol station and HGV parking) would lead to the use of land allocated for B use employment for non-B class uses. Very approximately, half of the site would be occupied by motorway service related uses and the hotel.

- The Local Plan was adopted in 2015 and subjected to a plan-wide viability assessment.

- At para. 7.2.4 of the supporting statement, the applicant notes, "...The greenfield site has been allocated in recognition of the limited available space within the existing settlement of Banbury".

- The application proposes part use of the site for employment (B class uses).

- The viability assessment for the non-provision of B2 uses should also consider whether the motorway services uses and hotel are required from a viability perspective.

- Paragraph B.48 of the Local Plan states that the provision or the loss of jobs in general terms will be a material consideration for determining planning applications for any use classes. It states that where any allocated or committed employment sites remain undeveloped in the long term and there is no reasonable prospect of the site being used for that purpose other uses will be considered.

- The site is has not been undeveloped for a long period of time in the context of the plan period to 2031.

- The jobs to be created by the non-B use proposals and the benefits of the proposal more generally need to outweigh the loss of allocated B-use land.

- The applicant states that 985 jobs will be provided by the B uses classes on the site and 1,145 in total. This should be examined by the Council's Economic Development Officer.

- The reasoning for non-B class uses should be considered in the context of the potential loss of allocated land for B class uses.

- Should permission be granted, there should be certainty that the proposed B use classes would be delivered in advance of or at the same time as the other uses proposed. Measures to avoid the potential future loss of B class uses should also be considered in view of Policy Banbury 15 requirements.

- The proposed 81-bedroom hotel is a 'main town centre use' as defined in Annex 2 of the NPPF and paragraph B.56 of the Local Plan. Policy SLE2 directs main town centre uses towards the District's urban centres. A sequential test will need to be considered.

- While Policy SLE3 (and para. B.62) supports tourism growth, there is conflict with Banbury 15.

- Notwithstanding that the proposed motorway services building (food and beverage outlets) is related to the strategic highway network, a sequential test will be required to meet NPPF and Local Plan policy. At 4175.3 sq. m (gross external area), an impact assessment will also need to be considered.

- Para. 31 of the NPPF states that the primary function of roadside facilities for motorists should be to support the safety and welfare of the road user

- Saved Policy TR8 requires a need for the release of new sites for petrol filling stations and other commercial facilities to be demonstrated.

- DfT circular 02/2013, more recently published states, "...In determining applications for new or improved sites, local planning authorities should not need to consider the merits of the spacing of sites beyond conformity with the maximum and minimum spacing criteria established for safety reasons. Nor should they seek to prevent competition between operators; rather they should determine applications on their specific planning merits".

- Para. 5.26 of the saved Cherwell Local Plan states, "...The Council will resist proposals for new petrol filling stations/service areas in the vicinity of the motorway interchange at Banbury which would prejudice the free flow of traffic to and from the motorway." The views of the Highway Authority should be considered including

on the maximum and minimum spacing criteria as referenced in the circular (including the cited maximum distance of 28 miles or 30 minutes drive time).

□ In the context of partial conflict with Policy Banbury 15, whether there is a need for the Motorway Service Area should be considered.

□ The development of this gateway site should provide opportunities for high profile employment development and for high design standards to be achieved. Policy Banbury 15 requires a high quality, well-designed approach to the urban edge which functions as a high profile economic attractor but which also achieves a successful transition between town and country. A "...high quality commercial District for the east of Banbury..." needs to be delivered in implementing the policy. A high level of integration and connectivity with the town is required.

□ In considering the highway implications of the proposed development, any potential advantage arising from HGV's not having to access residential and congested areas of Banbury should be considered.

Oxfordshire County Council (OCC)

The OCC consultation response is summarised as followed and can be seen in full via the online planning register:

Transport

Objection for the following reasons:

- From the information provided, it is not possible to verify the amended forecast traffic flows.
- Aspects of the design of the proposed mitigation scheme at M40 Junction 11 present a severe safety hazard.
- Notwithstanding the above, the proposed mitigation scheme does not deliver sufficient capacity at the junction and it remains the case that there would be a severe impact on traffic congestion in 2021 and 2026.
- There is significant uncertainty about the deliverability of the highway mitigation schemes proposed by the applicant which rely on agreement to them by OCC and Highways England and which involve significant engineering works that would have other environmental implications;
- Details of a Strategic Transport contribution have not yet been agreed. This would need to include financial contributions towards a future scheme or schemes to bring relief to the Hennef Way corridor.
- The proposals for the pedestrian and cycle access into the site remain inadequate: the lighting is not appropriate and there is insufficient information about the CCTV.
- Visibility splays to the access junction roundabout are shown incorrectly on the Site Plan.
- Visibility splays from the MSA are below DMRB standard for the assumed road speed and there is inadequate forward visibility for drivers of vehicles travelling around the corner from the J11 roundabout along the A361.
- Both the site access junctions have been modelled assuming HGV % is zero, which means the forecast queue lengths and delay are unreliable.
- The cramped layout of the site, combined with the relatively short access road within the site, mean there is a high risk of traffic queueing to enter the site and queues backing up onto the A361, causing a safety hazard and potentially extending back to the M40 junction, with possible additional congestion impact.
- No vehicle tracking has been provided to show that traffic can move safely and efficiently around the revised layout.
- Tracking has not been provided to demonstrate that the abnormal loads bay would be usable by abnormal loads (it probably isn't).

Archaeology

The site is located in an area of archaeological interest and a programme of archaeological investigation will need to be undertaken ahead of any development of the site. This can be secured through appropriately worded pre-commencement conditions.

Economy and Skills

Policy Banbury 15 does not provide for the motorway service area, HGV parking or hotel elements of this application which in comparison will provide lower/unskilled jobs. The Local Plan states that this new employment site is intended to ensure the economic strengths of Banbury in manufacturing, high performance engineering and logistics can be maintained – the motorway service area, HGV and hotel uses will not ensure this.

Other External Consultees

Environment Agency – No objection to the latest proposals subject to conditions being imposed that require the development to be carried out in accordance with the measures detailed in the Flood Risk Assessment.

Highways England (HE) – No objection based on the latest submissions.

Firstly, it is worth explaining that in the case of trunk road and motorway service areas our concerns are in essence twin-track in nature i.e (i) the conventional planning issues; and (ii) a response in relation to traffic sign provision (for which the future operator is required to enter into a Traffic Sign Agreement (TSA)). The conventional planning response is no different from that of any other type of development, relating to the impacts on the strategic road network (SRN) and the mitigation of those impacts. A TSA is a prerequisite for installing service area signs on the SRN and, as such, our principle means of ensuring service area operators continue to maintain facilities for users at or above acceptable standards as set out in DfT Circular 02/2013 (“the Circular”). These standards essentially relate to the provision of facilities such as adequate free parking for a range of vehicle types, catering, toilets and the like.

In this case the conventional planning response focused largely on the changes to traffic movements at M40 J11. It was established fairly early on that while queues on the M40 off-slip roads would increase as a result of the proposals this would not be to the extent that it would result in severe impacts on safety. On this basis we were prepared to recommend conditions based on the mitigation proposals proposed at that time. This was, of course, entirely without prejudice to the potential impacts on the local highway network and, therefore, the views of Oxfordshire County Council on the application, who might therefore reasonably raise objections on any number of technical aspects.

As it turns out, the applicant has proposed further upgrades to J11 which, if delivered, would most likely reduce queues and delays on the M11 off-slip roads (even if the primary purpose of them is to help address issues on the local highway network). I can appreciate OCC’s concerns over deliverability and it is quite reasonable this is taken into consideration in their conclusions. However, as we had already concluded the queues on the slip roads without this additional improvement would be within tolerable limits and it could be considered unreasonable for HE to object to those additional improvements. Again, this should not be seen to undermine any objections OCC may raise.

Regarding the MSA prerequisites, a mis-reading of the Circular led Highways England to wrongly conclude that the originally proposed layout of the MSA met the Circular's minimum requirements. Once recognised, this was quickly addressed as part of the amended proposals with the applicant subsequently making changes to the layout to correct this.

Thames Water – No objection as there is adequate capacity within the mains water supply and sewerage network to accommodate the development.

South Northamptonshire Council (SNC) – Objection. Consultation response appended to this report.

Northamptonshire County Council (NCC) – Comments incorporated within the SNC consultation response appended to this report.

HS2 Ltd - The proposed access is along the A361 which will be a busy HS2 construction route with up to 1000 HS2 HGVs (combined two-way flow) per day. If the construction of the development is at the same time as HS2 then this could impact on HS2 construction activities and increase congestion in the vicinity of Junction 11 M40. Similarly the operation of these activities if the development is complete before HS2 could impact on HS2 construction traffic, particularly if the generated traffic uses Junction 11. This should be considered as part of the transport assessment work.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. 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. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLPP1)

- Banbury 15 – Employment Land North East of Junction 11
- SLE1 – Employment Development
- SLE2 – Securing Dynamic Town Centres
- SLE4 – Improved Transport and Connections
- SLE5 – High Speed Rail 2
- BSC8 – Securing Health and Well-Being
- ESD1 – Mitigating and Adapting to Climate Change
- ESD2 – Energy Hierarchy and Allowable Solutions
- ESD3 – Sustainable Construction
- ESD4 – Decentralised Energy Systems
- ESD5 – Renewable Energy
- ESD6 – Sustainable Flood Risk Management
- ESD7 – Sustainable Drainage Systems
- ESD8 – Water Resources
- ESD10 – Protection and Enhancement of Biodiversity and the Natural Environment

- ESD13 – Local Landscape Protection and Enhancement
- ESD15 – The Character of the Built and Historic Environment
- ESD17 – Green Infrastructure
- INF1 – Infrastructure

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- TR8 – Commercial Facilities for the Motorist
- C8 – Sporadic Development in the Open Countryside
- C28 – Layout, Design and External Appearance of New Development
- ENV1 – Pollution Control
- ENV12 – Land Contamination

7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Department for Transport Circular 02/2013 (The Strategic Road Network and the Delivery of Sustainable Development)

8. APPRAISAL

8.1 Officers' consider the key issues for consideration in this case are:

- Principle of Proposed Development;
- Access, Traffic and Transport;
- Design and Layout;
- Landscape;
- Ecology;
- Impact on Town Centre(s);
- Flood Risk and Drainage;
- Energy Efficiency/Sustainability;
- Air Quality;
- Infrastructure/Planning Obligations

Principle of Proposed Development

- 8.2 Legislation in the form of Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require planning applications to be determined against the provisions of the development plan for the area unless material considerations indicate otherwise. Current national planning policy within the NPPF (which is a material planning consideration of significant weight) reaffirms this position and confirms that the starting point for proposals that are contrary to an up-to-date Local Plan (i.e. those local planning policies within a development plan document that are consistent with the NPPF) is refusal unless material considerations justify a departure from it. Recent court judgements have concluded that there is no presumption in favour of sustainable development within the NPPF where a proposal conflicts with an up-to-date development plan given that the plan itself will have been prepared against national planning policy and guidance and so must in itself be a sustainable strategy for the area. As a result, significant and specific overall benefits would need to be demonstrated to justify departing from a development plan that is up-to-date with respect to national policy rather than a generic balancing exercise as part of a presumption in favour of sustainable development.

- 8.3 The adopted Cherwell Local Plan 2011-2031 Part 1 (CLPP1) is the principal development plan document for the District that sets out a strategy and overarching policies to provide for sustainable growth within the District to meet identified need through to 2031. Having been examined and found sound by an independent inspector against national policy (i.e. NPPF) and relevant statutory tests it is considered to be up-to-date. It primarily focuses new growth in the District to Banbury and Bicester whilst limiting it elsewhere in order to provide for the most sustainable form of growth over the plan period. Amongst other things it identifies a number of strategic sites for housing and employment development in and around Banbury so that they are provided in carefully considered proportions in order to deliver a sufficient number and type of jobs to reduce the need for out-commuting from Banbury arising from the new housing which would be unsustainable.
- 8.4 Banbury 15 is one of the strategic employment sites allocated in the CLPP1 to meet projected need. Policy Banbury 15 of the CLPP1 provides a site specific policy covering the allocation and supports a mix of employment generating development within Use Classes B1 (office), B2 (general industrial) and B8 (storage and distribution). The supporting text to Policy Banbury 15 refers to the site contributing towards the economic strengths of Banbury in the manufacturing, high performance engineering and logistics industries. Policy Banbury 15 requires development to provide approximately 1000 jobs from the site in order to properly contribute towards the planned sustainable growth of Banbury. This figure is clearly premised on a range of Class B1, B2 and/or B8 development coming forward on the site as high proportions of development in one single Class B use may generate quite different job numbers to this figure with offices tending to employ significantly greater numbers of people per square metre of floor space than warehousing for example.
- 8.5 The application relates to the entirety of the allocated Banbury 15 site and proposes a large warehouse (Use Class B8) at the north of the site, two office buildings (Use Class B1) in the centre of the site and a motorway services facility (sui generis – i.e. does not fall within a use class) within the southern half of the site. The term Motorway Services Area (MSA) is used within the transport industry to describe such facilities where they are to be official motorway services facilities that are 'signed' from the motorway by Highways England. As this is what the applicants are proposing officers have used the acronym MSA throughout this report to describe it although representations made by rival MSA operators continue to contest that it does not meet all of the relevant criteria to constitute a signed MSA.
- 8.6 Put simply, an MSA does not fall within Use Classes B1, B2 or B8 and neither can it be said to be a closely related alternative employment generating use that the Council might have reasonably considered when considering the implications associated with allocating the site as it has done through Policy Banbury 15. Furthermore, the proposed MSA is not a minor or supporting element of the proposed development but a substantial one that accommodates close to half of the allocated Banbury 15 site. As the application proposes a markedly different development type on a substantial part of Banbury 15 than that for which it has been allocated there is no doubt in officers' minds that the proposals represent a clear departure from this strategic allocation policy and therefore the development plan as a whole. Having regard to the provisions of legislation and national planning policy outlined in paragraph 8.2, the starting point for the application in this respect should be refusal unless there are cogent reasons to depart from the development plan. In doing so, officers have considered whether the proposals could still generate a sufficient number, type and variety of jobs as sought by Policy Banbury 15 and whether therefore the proposals could perhaps fall within the general spirit or aspirations of the policy.

- 8.7 However, even taking the applicant's own figures at face value, the proposed MSA is only likely to generate approximately 110 FTE jobs yet accommodates close to half of the allocated Banbury 15 site. It is inevitable that the majority of these jobs will be lower skilled and lower salaried in nature and it is generally not these types of jobs that Banbury needs in order to prevent out-commuting to Oxford and elsewhere. It is also difficult to conclude that the proposed MSA would fall within or especially support the existing economic strengths of Banbury in the manufacturing, engineering or logistics industries and therefore not make a strong contribution towards the local economy. Notwithstanding that, the applicant still contends that overall the development proposed would deliver approximately 1000 jobs and that these would be of a variety of types. Irrespective of officers' concerns about the type of development offered by the proposed MSA and the consequent type of jobs it would provide, officers do not accept the applicant's position with respect to the overall job numbers that the development would generate. First, by applying typical employment densities as derived from HCA's Employment Density Guide (2015) approximately 480 jobs could be expected to be delivered from the proposed office floor space and approximately 250 from the warehouse proposed. Together with the claimed 110 jobs from the MSA this would result in a total of 840 jobs which is a material shortfall to the objectives of Policy Banbury 15. Second, this would rely on the proposed Class B1 and B8 elements of the development actually being delivered exactly as shown rather than just theoretical commitments within a planning permission – i.e. the MSA would be built-out as Eurogarages would be the operator but the remainder of the development would exist on paper only and not necessarily in practice. The applicant is not prepared to be legally obligated to construct the warehouse and office elements so that they are available for occupation prior to the operation of the proposed MSA.
- 8.8 As Members will well know, there has been limited interest from potential occupiers of new office developments in Banbury for quite some years given that the economy has been focused more heavily on the engineering and distribution sectors. Given its low job generation density versus site area, the proposed MSA together with the warehouse would deliver considerably less than half of the total number of jobs sought from Banbury 15 leaving the site completely dependent upon the two office buildings to generate adequate amounts of employment. Whilst delivery of the warehouse element of the scheme is more likely given the strength of the logistics and distribution industry in Banbury, the uncertainty about interest in and delivery of these office buildings is simply far too great to consider it prudent to lose such a substantial proportion of the allocated site to an alternative and low employment generating development such as an MSA. Officers' believe the applicant's unwillingness to commit to actually constructing the office buildings tells its own story in this respect.
- 8.9 Consequently officers have concluded that by virtue of the loss of a substantial proportion of the allocated site to the proposed MSA that the proposals are in direct conflict with not only the specific requirements of Policy Banbury 15 but also the general aspirations of the policy to the detriment of the supply of an adequate number and type of jobs needed in Banbury to sustainably support the planned growth within the CLPP1.
- 8.10 In addition to considering the employment implications of the proposals, there are also other matters that are relevant to the principle of the proposed development. In particular, and notwithstanding the conflict with Policy Banbury 15, this principally revolves around whether there is any national or local planning policy support for roadside or motorway services facilities on the site or in this general location. Were there to be clear evidence of a substantial need for such a service facility in this location and there was found to be a lack of suitable alternative sites it could be

arguable that this may present a material planning consideration of considerable weight.

- 8.11 The applicant has however presented no evidence that there is such a need. Indeed there is an existing MSA at Junction 10 of the M40 as well as an 'on line' MSA shortly beyond Junction 12. The NPPF is relatively silent on roadside services and specifically motorway services except to say that "*the primary function of roadside facilities for motorists should be to support the safety and welfare of the road user*". Notwithstanding the lack of evidence provided by the applicant, officers have given some consideration as to whether there is a clear need for such an MSA in this location. Circular 02/2013 provides national transport policy covering the strategic road network (i.e. trunk roads and motorways that are not within the remit of the local highway authority) and is a material consideration when considering the merits of roadside services (such as an MSA) on the strategic road network. Circular 02/2013 recommends that MSAs should be no more than 28 miles apart or an average of more than 30 minutes driving time between them in order to properly serve the safety and welfare needs of motorists. It clarifies that distances between them can be shorter and it doesn't specifically conclude that there is never a need for MSAs closer than 28 miles apart, but that 28 miles is the recommended maximum. However, the distance between the existing MSAs at Junction 10 (Cherwell Valley Services) and Warwick Services (approximately 3.5km beyond Junction 12) is 23 miles and there is no suggestion that travel times between them typically exceed 30 minutes. As a result, and in the absence of any other clear evidence to the contrary, there is little to suggest that there is a genuine highway safety or welfare need for an additional MSA in this location. Whilst an additional MSA would add to consumer choice and provide a further facility for motorists, there is relatively little weight that can be attached to this and certainly nothing close to the weight necessary to contemplate overriding the scheme's conflict with Policy Banbury 15.
- 8.12 Members should also note Policy TR8 of the CLP 1996 which remains adopted and part of the development plan. This policy resists the development of sites for new petrol filling station or other roadside facilities outside the built-up limits of settlements unless the need for such facilities can be clearly demonstrated. In the supporting text to Policy TR8 it specifically states that the Council will resist proposals for new service areas in the vicinity of the motorway interchange at Banbury which would prejudice the free flow of traffic to and from the motorway. The supporting text to Policy TR8 also references Circular 23/92 which is essentially several iterations previous to Circular 02/2013.
- 8.13 As Policy TR8 is part of the development plan it must be followed unless material considerations indicate otherwise. It is recognised that as the policy formed part of the 1996 Local Plan that it is old though Government guidance in the NPPF states that policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF but rather the weight to be afforded to them should depend on their degree of consistency with the NPPF. It adds that the closer the policies in the development plan to the policies in the NPPF, the greater weight they should be given. As mentioned previously in this report, paragraph 31 of the NPPF refers to roadside facilities and simply adds that their primary function should be to support the safety and welfare of the road user. Whilst the NPPF doesn't expressly state a requirement to show evidence of need unlike Policy TR8, neither does it state or suggest otherwise. Furthermore, given that Circular 02/2013 does not indicate a need for an MSA it is also thought to be broadly consistent with the previous Circular 23/92 referenced in Policy TR8 in this respect which adds further support for the continued relevance of Policy TR8 with respect to its control over motorway services. Officers are therefore minded to give reasonable weight to Policy TR8 of the CLP 1996. As the application site is outside the existing built-up

limits of Banbury and the applicant has not demonstrated a need for the MSA (and there is no other evidence available to show there is a clear need, including within national transport or planning policy), the proposed MSA element of the proposals is considered to be contrary to the requirements of Policy TR8 of the CLP 1996. Whilst it could be argued that the site is allocated for development it is still outside the built-up limits of Banbury or any other settlement. Furthermore, even if part of the site were to be developed for Class B1, B2 or B8 purposes as is proposed, then it is still the case that the proposed MSA element would be outside the built-up limits of the settlement as it would extend onto greenfield land on the edge of Banbury that would not be surrounded by other built development. As a result, even though the site is allocated for built development, it does not necessarily render the requirements of Policy TR8 less relevant.

- 8.14 In conclusion, officers' have found that by virtue of the inclusion of the proposed MSA the proposals would cause significant harm to the ability to provide a sufficient number and type of jobs on the site to sustainably meet the economic needs and planned growth of Banbury contrary to the requirements of Policy Banbury 15. Furthermore, Policy TR8 of the CLP 1996 specifically resists the development of roadside service facilities outside built up limits of settlements which the proposals would conflict with and there has been no clear and convincing evidence of need for an MSA or other roadside facility on the site or in this general location. Officers therefore find the principle of the proposed development to be wholly unacceptable.

Access, Traffic and Transport

- 8.15 Policy Banbury 15 of the CLPP1 requires development on the site to be served by satisfactory means of access and based on a detailed transport assessment. Policy SLE4 of the CLPP1 requires all development to facilitate the use of sustainable modes of transport where possible and resists development that would have a severe traffic impact. These policies have requirements that are consistent with national policy set out in the NPPF. In assessing the proposals officers have had regard to the advice provided as part of consultation on this planning application by OCC in relation to transport matters in its role as the local highway authority as well as, where relevant, Highways England (HE).
- 8.16 As part of the amended proposals there are two means of vehicular access to the site from the A361. Access to the proposed MSA is via a new three-arm roundabout which necessitates alterations to the alignment of a short section of the A361 to both the north and south. The second access is in the form of a priority junction further to the north and this serves the proposed warehouse and office elements of the development. It is understood that two vehicular accesses have been included in the amended proposals rather than the original single access in order to meet Highways England signage criteria so that it would be signposted from the M40.
- 8.17 Turning first to the proposed roundabout, officers see no reason in principle why this approach to vehicular is unsuitable. However, the roundabout proposed does not enable adequate visibility splays onto the A361 from the MSA even on the assumption that vehicles would be travelling at 40mph on what is currently a national speed limit road. Whilst highway officers at OCC accept that most drivers are unlikely to reach 60mph on the bend after exiting the J11 roundabout, that in the absence of speed survey data the visibility splays should be adequate for at least 40mph as a realistic minimum. The proposals do not show that this can be achieved. The only way to increase the visibility splays is to remove even more vegetation along the A361 (discussed later in this report) and alter the siting/design of the petrol filling station it obstructing the sightlines. Furthermore, as the proposed new northbound bus stop would see buses waiting on the carriageway rather than within a layby, adequate forward visibility from around the bend is needed for drivers to a stopped bus. This is not shown to be the case for a 40mph speed limit even

based on the sightlines being drawn on the plans as generously as possible. Officers therefore see no reason to disagree with the concerns raised by OCC about the safety of the design of the proposed roundabout access. In addition to safety concerns, OCC has also raised concerns about the capacity assessment undertaken for the proposed roundabout within the applicant's transport assessment which sees the percentage of HGVs using it set to zero. This is believed to represent an incorrect use of the modelling software and is clearly not realistic given the increase in lorries expected from the warehouse and MSA development proposed together with the future HS2 construction traffic.

- 8.18 OCC has also raised similar concerns about the proposed priority junction access further to the north. The visibility splays shown are considered to be too short for the road speeds and the junction has also not included HGV movements within the modelling and so outputs for queueing and delay are not robust. OCC has also noted that there is a lack of provision for safe pedestrian crossing of the A361 to the southbound bus stop other than using the splitter island on the proposed roundabout, a point also raised by Northamptonshire County Council in its consultation response. It is not suggested however that this necessarily makes pedestrian access to the bus stop dangerous but it is questionable whether it promotes sustainable travel in the way that Policy SLE4 and the NPPF require.
- 8.19 Having regard to the above officers are therefore of the view that the proposals would not provide safe and suitable access to the development for all users contrary to the requirements of Policies Banbury 15 and SLE4 of the CLPP1 as well as national policy set out in the NPPF.
- 8.20 The application site is to the east of the M40 and not safely accessible for pedestrians or cyclists via the M40 J11 roundabout. The only realistic means of accessing the site by foot is along the roads and public footpath that pass through Wildmere Industrial Estate and the Banbury Gateway Shopping Park and through the M40 underpass. The underpass is however dark and not subject to regular active surveillance such that it would feel unsafe and undesirable to use for many employees or visitors to the proposed development. There is however scope to improve it through lighting, CCTV and aesthetic changes to make it feel safer and more attractive which both officers and OCC support. These improvements however would need to take place predominantly on land that is not within the control of either the applicant or OCC. The land is owned by a combination of Highways England and the Environment Agency and as such the works proposed by the applicant are not guaranteed to be deliverable. Without them however there would not be suitable and safe pedestrian/cycle access to the development. There is evidence provided however by the applicant that suggests that both Highways England and the Environment Agency are amenable to the principle of the works taking place on their land and so officers are satisfied that there is a reasonable prospect of a suitable scheme of improvements to the public footpath being able to take place. As a result, these works could be secured by an appropriately worded condition together with contributions towards future maintenance being secured through a planning obligation. Whilst an improved environment within and either side of the underpass would better encourage its use, officers still recognise that it would be far from ideal given that it is the sole means of pedestrian/cycle to the site. However, there are no reasonable alternatives and it has to be recognised that the site has been allocated for development through Policy Banbury 15 and so officers must conclude that, subject to relevant conditions and planning obligations, the development would be adequately accessible for pedestrians and cyclists in accordance with the requirements of Policy Banbury 15.
- 8.21 Policy Banbury 15 requires good accessibility to public transport services to link with the urban area of Banbury. The proposed development makes provision for access

by bus through inclusion of bus stops on both the northbound and southbound carriageways either side of the new roundabout. These bus stops are within the carriageways rather than in laybys which is disappointing given the traffic flows along the A361 and the safety issues identified previously regarding visibility splays. Nevertheless provision is shown for bus stop infrastructure and in the event that Members were minded to grant planning permission they would need to be secured via a planning obligation. Whilst buses could reasonably be expected to provide an alternative means of access for staff working on the site, officers recognise that only a relatively small proportion of the staff would be expected to use this mode of travel particularly in relation to shift workers that often dominate the employment associated with MSAs and warehouses where the working hours don't tend to correlate well with bus timetables. The current bus service past the site is however limited and would not provide a particularly convenient alternative to use of the private car. In recognition of the inadequate existing bus services currently routing past the site, OCC have recommended that a financial contribution (of £123k index linked) is secured towards increasing the frequency of the buses linking the site with Banbury and officers concur with them that this is necessary. It is disappointing however that access to the new southbound bus stop is not served by a safer form of crossing the A361 than relying on use of the roundabout's northern splitter island.

- 8.22 Having considered the proposed means of access to the development it is now necessary to have regard to the implications of the proposals on the wider highway network. In doing so it is important to be reminded of the tests that need to be applied in order to assess the acceptability of the proposals in this respect. The standard approach, and the one followed by the applicant, is to try to demonstrate that the proposals avoid severe cumulative harm to the road network in line with relevant part of national policy set out within paragraph 32 of the NPPF. Policy SLE4 of the CLPP1 is however the starting point for consideration of the transport impacts though this has broadly similar requirements. Whilst officers agree that both Policy SLE4 and paragraph 32 of the NPPF are important, it is also essential to remember that the applicant is attempting to demonstrate cogent material considerations as part of these proposals that override what officers' have identified as conflict with the development plan for which the starting point is refusal. In officers' view it is therefore important to also have regard to whether the proposals would be likely to have materially worse impacts on the wider highway network than would have been expected if the site was developed for a variety of Class B1/B2/B8 uses in accordance with its allocation. As the site is allocated for employment purposes an increase in traffic is to be expected but in taking the decision to allocate the site the Council must have considered that this type and amount of development would have been appropriate for the highway network and that any significant adverse transport impacts could have been satisfactorily overcome.
- 8.23 In considering the impacts of additional road traffic it is necessary to have regard to any increases in congestion and associated delay for motorists together with any adverse highway safety implications. Officers recognise that there are existing traffic congestion problems on the J11 roundabout and on Hennef Way in particular. The transport assessment (TA) submitted by the applicant is clear that the proposed development would result in a substantial increase in road traffic with a significant proportion of the increase resulting from the proposed MSA. The applicant's TA has modelled the projected traffic flows at the opening year and in future years (2021 and 2026) and recognises the proposals would cause very severe congestion without carrying out alterations to both the local and strategic (M40) highway network. The applicant then proposes a number of highway mitigation schemes to reduce the traffic impacts including: signalisation of the A422 and A361 approaches to the J11 roundabout, widening of the A361 to provide two approach lanes to the roundabout, widening of the circulatory on the western side of the roundabout to provide an additional lane, widening on the A422 Hennef Way east arm to enable an

extension to the left turn lane as well as widening of the M40 off-slips to provide additional lanes. Together these measures have been designed by the applicant to accommodate the cumulative impact of the proposed development together with projected traffic growth through to 2026 as well as allow for HS2 construction traffic without resulting in cumulatively severe traffic impacts. The applicant is therefore not suggesting that traffic congestion will be no worse than at present as a result of the proposed development or that the result will be likely to be no worse than if the site was developed in accordance with the Banbury 15 allocation – it is simply the applicant's contention that the residual impacts after mitigation will not be severe i.e. the test set out in Policy SLE4 and paragraph 32 of the NPPF.

8.24 OCC as the local highway authority has considered the applicant's traffic modelling and has significant reservations about the assumptions and inputs employed within the modelling which in their view means that the outcomes are not robust. In OCC's view this means that the likely traffic flows and the congestion projected at various junctions is likely to be worse than that forecasted by the applicant's modelling. The concerns relate to the following:

- The applicant's projected turn-in rate for M40 traffic to an MSA is too low (OCC previously considered a figure of 6% to be appropriate for weekday traffic) which then underestimates traffic flows leaving the M40 at J11 onto the roundabout which would have knock on effects on other flows as well as the increased potential for queueing back onto the mainline of the M40;
- The applicant has not shown how projected traffic flows from other committed development (i.e. planned or approved) in the surrounding area have been distributed and so it is not known whether the assumptions about the vehicle numbers passing through J11 are realistic;
- The applicant has reduced projected traffic flows to take account of the removal of the previously proposed hotel as well as slight reduction in warehouse floor space – there is no working to show how this has been reduced;
- Circulating lanes within the modelling have been set to ignore random delay. Random delay should be used as a default to reflect the fact that, in reality, traffic over a peak hour does not have a flat profile and there are peaks within the peak. In other words, the model has been unrealistically set to assume traffic arrives evenly through the peak hour;
- The A361 approach to the roundabout has been incorrectly modelled as two long lanes when one should be set as a short lane. This means the model is overestimating the capacity on this arm. There is already significant queueing traffic on the A361 approach and there is a risk that traffic will tail back to the proposed MSA roundabout junction and block traffic exiting the MSA.

8.25 Officers have no reason to doubt OCC's position with respect to the traffic modelling. A lack of robustness to the modelling leaves the impacts unclear and potentially materially worse than suggested by the applicant within their TA. Notwithstanding that, even taking the modelling within the TA at face value despite its deficiencies, OCC has substantial concerns about the impact of the proposals on the operation of a number of junctions which in their view would suffer from what would amount to severe cumulative congestion. There are shown to be multiple junctions modelled to experience degrees of saturation (DoS) above 90% which indicates severe congestion and some of these junctions would experience resulting queues that could not be accommodated within the road layout and could block exits from the roundabout. This could lead to queue lengths on the approach arms of the roundabout being much longer than modelled. OCC consider it crucial for the efficient operation of signalised roundabouts (as is proposed) for the circulating lane queues to be within storage capacity.

- 8.26 The applicant's traffic modelling relies on all of their proposed highway improvements being carried out. However, in order to make this assumption all of the proposed works need to be deliverable which relies on both OCC and Highways England (HE) agreeing to the works on their land – an agreement that may not be forthcoming if there are safety or suitability concerns about the proposed works. OCC has raised safety concerns about the proposal to widen the circulatory which would see four lanes at 15m wide being 'squeezed' down to 11m prior to the Hennef Way exit. This proposal has not been subject to a road safety audit and if OCC continue to have concerns about the works it may not give their consent to carry them out under a highway agreement leaving this mitigation undeliverable. Of even greater concern however are the proposals to widen the M40 off-slips by introducing an additional lane. These works would involve substantial engineering operations to which Highways England have not given their support and would entail large scale removal of boundary vegetation (something not considered within the applicant's ecological or landscape appraisals) as well as significant retaining structures that would be costly and probably rather utilitarian in appearance. In the absence of specific agreement from Highways England that these works could take place, this mitigation cannot be relied upon within the modelling. If these highway mitigation schemes are removed from the modelling then the forecasted traffic congestion would be even more severe than already predicted by OCC. Such severe congestion, with or without the mitigation schemes, would result in a junction that in OCC's view would not operate within capacity and which would have severe consequences particularly given that it is the only motorway junction serving Banbury. In addition to severe congestion at J11, the proposal would be likely to materially increase rat-running on local rural roads in Oxfordshire and Northamptonshire to try to avoid the congestion though the increase and impact of such any increase is difficult to quantify.
- 8.27 Officers have no reason to disagree with the conclusions reached by OCC and as such find that the proposals would result in severe traffic congestion at what forms the principal vehicular entry/exit of Banbury with consequent significant economic impacts for existing businesses, delay for motorists and increased risk to highway safety. In this respect the proposals are considered to be contrary to the requirements of Policies SLE4 and Banbury 15 of the CLPP1 as well as national planning policy set out in the NPPF.
- 8.28 What is notable from the applicant's TA is that whilst it addresses the 'with development' and 'without development' scenarios with respect to traffic impacts (albeit not robustly as detailed previously), it does not address whether the proposals would be likely to give rise to materially greater traffic congestion on the highway network than in comparison to developing the site for the purposes for which it has been allocated. This is important bearing in mind that the applicant is attempting to demonstrate that there are clear benefits to the scheme that outweigh harm and the conflict with the development plan. Policy Banbury 15 provides for a variety of Class B1, B2 and B8 development on the site to deliver approximately 1000 jobs. Class B1 in particular tends to operate around fairly standard office hours and would result in increased traffic flows in the weekday peak hours. Class B2 and B8 uses are typically less intensive with respect to traffic generation and can include more shift work and traffic movements outside of the peak hours. The applicant has not attempted to undertake a hypothetical assessment of the traffic flows likely to result from a mixed development of this type and this may be because it is unlikely to be favourable to their position. Weekend traffic flows resulting from the proposed development would inevitably be far greater than that resulting from a mixture of Class B uses and very likely too on weekdays during peak hours. It is of course possible that development in accordance with the allocation may still require off-site highway improvements and strategic transport contributions to adequately mitigate highway impact but this would be likely to have less cumulative impact overall, be

easier to mitigate and not result in a requirement for such significant highway works that give rise to other environmental harm. In taking its decision to adopt the CLPP1 the Council accepted that the site could satisfactorily achieve Class B1, B2 and B8 development and would have considered the potential implications of that type of development including on matters such as traffic. As a result there is nothing within the applicant's submissions to indicate that the proposals would be in any way beneficial (and in officers' view probably worse) in transport terms in comparison to following the provisions of Policy Banbury 15. This further weighs against the proposals.

- 8.29 Highways England is a statutory consultee in relation to applications such as this that affect the strategic road network which includes motorways and trunk roads. Their remit as a consultee is to consider the impact of development proposals on the safe operation of traffic on its network. Highways England has however taken the applicant's traffic modelling at face value and on this basis has concluded that the proposals would not result in additional queueing to the extent that traffic would be likely to tail back along the M40 off-slips on to the mainline which would have significant highway safety implications. As a result, Highways England has not objected to the proposals.
- 8.30 Whilst impacts on the strategic road network are not within the remit of OCC as the local highway authority, it is still a material planning consideration for the Council to assess and traffic flows on the local highway network directly affect queueing on the M40 off-slips. Officers do not dispute Highways England's conclusion that the proposed development as modelled by the applicant would not cause queueing on the M40 off-slips to such an extent that it would have severe traffic impacts on the M40. However, queueing on the off-slips is still shown to be significant during peak hours yet the modelling is not thought to be robust as it contains a number of deficiencies. If the modelling were to be re-run having addressed the concerns raised by OCC and removed the potentially undeliverable highway mitigation schemes then it becomes a distinct possibility that queueing would be forecast to tail back on to the M40 mainline. This brings into question the robustness of Highways England's consultation response and whether, in fact, the proposals would in practice be likely to give rise to tail backs along the J11 off-slips on to the mainline which officers would regard as further evidence of a severe cumulative traffic impact and therefore present significant risks to highway safety. Officers are therefore minded to conclude that not only would the proposals have a severe adverse impact on the local highway network but also potentially the strategic highway network too with both of these impacts likely to be greater than if the site was developed in accordance with its allocation.
- 8.31 There is little doubt that the proposed development would increase traffic flows along Hennef Way and affect the performance of other road junctions away from the J11 roundabout. OCC are of the view that the proposals, together with other committed development, would exacerbate existing severe congestion on the highway approaches to J11 which is assessed to worsen to critical levels in the near future. Notwithstanding both OCC's and officers' wider substantial concerns about the proposals, if the Council was minded to grant planning permission then OCC would be seeking a financial contribution towards improvement of strategic infrastructure to help remedy these issues. This contribution would be based on the formula set out in the Council's Developer Contributions SPD and would need to be secured through a planning obligation. Officers endorse the view taken by OCC in this respect.
- 8.32 Officers also concur with OCC's view with respect to deficiencies within the layout of the proposed MSA. This will be discussed in greater detail later in the report when covering design and layout considerations but this is also relevant to considering

issues of access and transport. It should be noted that Highways England only consider the MSA facility against the more quantitative standards for MSAs as set out in Circular 02/2013 and do not consider detailed matters of site layout. Highways England is content that the overall provision of parking and amenity facilities within the MSA would meet the minimum requirements as set out in Circular 02/2013 and therefore be eligible for signage from the M40.

- 8.33 In short, officers agree with OCC that the proposed MSA looks to be very cramped which results in a constrained layout that is poorly accessible for both motor vehicles and pedestrians and risks becoming highly congested during peak hours which could result in traffic queueing to enter the site from the A361 with consequent effects on traffic flows at J11. Traffic entering the site cannot avoid entering into the main part of the MSA in order to refuel as is found at almost all other MSAs. The layout relies heavily on right turning movements across traffic flows to exit the petrol filling station. All lorries would have to turn right across traffic twice to get from the petrol filling station to the lorry parking. Any lorries that did not visit the petrol filling station first would need to exit and go around the roundabout to get back to the filling station. To make matters worse, there is very little space for queueing for fuel meaning queues could block the access road into the main car park. In peak hours traffic circulating within the site could quickly back up as vehicles within the site wait to turn across traffic or for vehicles to make tight manoeuvres. This would not only create a poor quality environment filled with numerous conflicts between vehicles but also be likely to see traffic backing up to the roundabout on the short access road within the proposed MSA leading to queueing on the A361.
- 8.34 OCC together with a number of third parties have raised the inadequate provision of an abnormal load bay. At least one space for such a vehicle is required to meet Highways England's signage criteria for a new MSA based on application of Circular 02/2013. However, it appears that based on a 'typical' size for such a vehicle that the space provided for the abnormal load vehicle is difficult or even impossible to access through the filling station as would be necessary. This only adds to officers' concerns about the cramped and inappropriate layout of the proposed MSA and might also lead to vehicles carrying abnormal loads causing gridlock within the site and queueing back onto the A361. Officers do not agree with some of the third parties that provision for an abnormal load needs to be based upon the longest/widest load that might be expected to take to the road as drivers carrying such loads tend to research the route and plan appropriate places to stop rather than diverting into any MSA and expecting to find a suitable space. It is however considered appropriate to make provision for larger than normal vehicles as some such vehicles may enter the MSA expecting to be provided for and instead cause unnecessary congestion within the site. This only adds to officers' concerns about the inappropriate and ill-considered layout proposed for the MSA.
- 8.35 Policy ESD15 of the CLPP1 requires new development to "*promote permeable, accessible and easily understandable places that connect with each other and are easy to move through*". It goes on to add that places should promote pedestrian movement and integrate different modes of transport. Policy SLE4 and national policy set out in the NPPF are supportive of these requirements. The layout proposed for the MSA is however unfortunately not consistent with these requirements which inevitably stems from the aforementioned cramped nature of the site and the consequent limited opportunities to provide a suitable layout. There is an absence of clearly defined walking routes and safe crossing points within the site. Pedestrian access to the motorway services building from the car park requires crossing the main access road for the car park and there is no legible route by which pedestrians would walk through the car park to the services building. The coach parking has been shown to be some distance from the motorway services building and within the HGV park with insufficient space for passengers to assemble, board

and alight. The interaction between HGVs and coach parking is undesirable and there is an absence of a clearly defined safe walking route for passengers to the facilities. Many coach passengers comprise older people with walking difficulties as well as children and there should be a safe, convenient and desirable route for them that avoids the HGVs and does not involve crossing over the main access/egress road of the MSA. The accessibility and permeability of the layout to the proposed MSA therefore falls short of the standards expected and required by both local and national planning policy and officers' find this to be objectionable.

8.36 A number of third parties have commented on whether the proposed parking provision to serve the warehouse and offices is sufficient and in turn, whether parking could spill over into the MSA thus making it even more congested. The Council does not have adopted local planning policies in relation to parking standards though there are standards in the Non-Statutory Cherwell Local Plan 2011 which are similar to those used by OCC in its parking guidance. These figures are however maxima and national policy is no longer supportive of maximum parking standards. Officers would however expect car parking levels close to these maximum standards given that the site would be heavily dependent on car travel due to the relatively limited pedestrian/cycle accessibility and bus services to it. Whilst the parking provision for the warehouse and offices does fall slightly below the aforementioned maximum parking standards it is not significantly below these maximum standards and officers do not think that in itself this would be likely to have an adverse impact on the quality of the environment due to indiscriminate parking within the site or give rise to access or congestion problems. Whilst it may be possible that cars originating from neighbouring land uses could park within the MSA this would, in the main, be prevented by virtue of parking restriction requirements that would arise from the legal agreement with Highways England in order to meet signage criteria. This could include, for example, a limit of up to 3 hours free parking and should be sufficient to prevent staff from neighbouring businesses parking within the MSA. It would also be within the MSA operator's interest to prevent free use of the car park by others not using the facilities. Officers are therefore not unduly concerned about there being any potential for additional parking demand spilling into the proposed MSA and adversely affecting its operation. Nevertheless, were planning permission to be granted officers would recommend that it would be prudent for a condition to be imposed requiring the submission, approval and implementation of a car park management plan for the MSA to ensure that the Council had some control over parking arrangements on the site in the public interest.

8.37 In short and for the reasons given above, officers have concluded that the proposed development is not demonstrated to be served by safe and suitable means of access to and within the site for all users and furthermore would be likely to give rise to substantial cumulative traffic congestion on surrounding roads and junctions contrary to the requirements of Policies SLE4, ESD15 and Banbury 15 of the CLPP1 as well as national planning policy set out in the NPPF. It is also highly likely that the traffic impacts associated with the proposed development are materially worse than would be expected if the site was developed in accordance with the purposes for which it is allocated through Policy Banbury 15 and as such the transport impacts of the proposals provide no support for favourably considering a departure from the development plan.

Design and Layout

8.38 Policy Banbury 15 requires development on site to achieve a high quality, well designed approach to the urban edge which creates a successful transition between town and country environments. The policy also requires a high quality design and finish with careful consideration given to layout, architecture, materials and

colourings to reduce overall visual impact as well as a comprehensive landscaping scheme to enhance the setting of buildings on site and limit visual intrusion into the wider landscape.

- 8.39 Policy ESD15 of the CLPP1 is also material in this respect and requires new development to be designed to improve the quality and appearance of an area so that it contributes positively to an area's character by responding to site constraints and the wider context. Policy ESD15 also states, *inter alia*, that proposals should demonstrate a holistic approach to design of the public realm with integrated green infrastructure and a well-designed landscape scheme to provide attractive places to live and work. Policy C28 of the CLP 1996 has broadly similar requirements as does design based policy contained in the NPPF.
- 8.40 One of the fundamental concerns that officers have with the proposals is that rather than the site be designed holistically as required by development plan policy it is a disjointed muddle of uses that do not physically integrate successfully. Due to Highways England signage requirements for an MSA, there can be no vehicular access through to other development via an MSA. As a result, the primary employment elements on the site are accessed separately and kept distinct from the MSA and this prevents achieving a holistic and integrated design to the employment site. The proposed MSA is constrained to the southern half of the site with the back of lorry park forming the transition to the office buildings. These office buildings are sited in a peculiarly offset position and orientation with respect to other such that they do not create any sense of legible place or focus to the core of the site. The office buildings and centre of the site are also dominated by the large expanse of unbroken car parking where no meaningful attempt has been made to soften it with considered landscaping or integrate it more successfully into the site or around the buildings. A large warehouse building dominates the northern part of the site and this too is rather divided from the offices due to the road alignment. The result is three poorly integrated separate elements to the development that has no holistic or legible vision for the site.
- 8.41 The proposed development will form a new urban edge to Banbury and be highly visible from the A361 due to the need for substantial removal of existing hedgerow to facilitate creation of the new accesses and the construction of some of the buildings. The petrol filling station will form the highly prominent gateway to the site with very little scope for screening due to loss of existing vegetation and inadequate space for meaningful new soft landscaping. This is not an attractive edge to Banbury in keeping with the transition to the wider countryside nor is it a high quality building or structure of architectural merit to be so visible from the public realm. To the opposite side of the site entrance from the roundabout is an ambiguous open amenity area rather than a high quality building that properly addresses the new access road in order to provide a sense of arrival to the development to mark the new commercial district sought by Policy Banbury 15. As a result, with the existing hedgerow substantively removed, the site entrance to the MSA is then poorly defined, unattractive and fails to take the opportunities available to improve the area and respond to the site's context.
- 8.42 As discussed in the previous section of this report, officers consider the proposed MSA to be a cramped facility that attempts to overdevelop the southern part of the site and sees a large extent of unbroken car parking, roads, hardstanding and supporting infrastructure provided in an incoherent manner with very little space around or within this development to soften its appearance. It would therefore feel and appear as a harsh and utilitarian environment to future site users that would not create a successful public realm or respect the site's context. There is also a notable lack of amenity space around the services building for visitors and there is no meaningful and useable green infrastructure provided. To make matters even

worse, this poor quality environment is, as described previously, in combination with a layout that is poorly accessible for both pedestrians and vehicles leading to congestion within the site and conflict between the various site users. The motorway services building itself though is of a more appropriate scale given its position within the site and is architecturally relatively contemporary and inoffensive for the site's context. It is however sited rather close to the southern and eastern boundary of the site where hedgerow will need to be removed to ensure adequate visibility splays are available. This means the motorway services building may be more visible than it should be to from the A361 and surrounding countryside and therefore less sensitive to its surroundings but due to the cramped nature of the MSA facility there is no space to re-site it.

- 8.43 The office buildings proposed are, as discussed previously, sited in a disjointed position with respect to each other and dominated by a central mass of car parking. The buildings are rather generic in their form and appearance with the main range of the building featuring a combination of glazing and silver composite cladding together with elements of buff brickwork on the side elevations and for detailing. They have not been designed with a specific occupier in mind which may explain their rather generic design although it is difficult to conclude that the architecture is of high quality which is disappointing given the visibility of the buildings from the A361 due to a combination of their scale, siting and removal of vegetation. Officers don't specifically regard the scale of the office buildings to be inappropriate for the site given that they are of a nature that would have been expected on the site given its allocation. However their bland and rather unimaginative approach to architecture does not demonstrate a real effort to deliver high quality design given their prominent siting and the need to have a successful transition to the countryside.
- 8.44 The priority junction to the office and warehouse elements of the proposals forms the secondary access to the site yet features an entrance bereft of any definition or interest. There is neither a strong gateway created by active or engaging buildings nor has it taken the alternative and more sensitive approach of respecting the site constraints and providing buildings behind significant landscaping to help screen them. Instead the entrance is formed by contrived bunds and an open grassed area with no meaningful soft landscaping before transitioning to a large unsightly car park on the one side and an enormous warehouse to the other with its service yard fronting onto the main access road. It is recognised that the site is allocated for such Class B uses but there are numerous opportunities available to have designed this in a more suitable manner both to improve the appearance of the site from the A361 and countryside to the east as well as within the site.
- 8.45 Officers also question the scale and siting of the proposed warehouse and whether this is suitable in order to create the successful transition from town to country as required by Policy ESD15 as well as limit overall visual impact of development. Officers do not necessarily find the height of the warehouse building to be inappropriate given that it is not dissimilar to that of buildings to the west of the M40 and officers recognise that the site is allocated and that therefore some combination of office, industrial and warehouse type development is to be expected. However, this does not mean that any proposal for such development is acceptable; it must accord with other requirements of Policy Banbury 15 as well as other relevant development plan policies. Officers have particular concerns about the overall mass of the warehouse building together with its close proximity to the A361 and associated removal of vegetation. As a result the building would unacceptably impose itself in views from the road and appear incongruous with the wider character of the area and fail to suitably transition to its rural surroundings. A warehouse building that was smaller in footprint and/or mass and set further back from the site's countryside edges with meaningful intervening boundary vegetation

would be more appropriate and consistent with the requirements of Policy Banbury 15.

- 8.46 The site features an established hedgerow along its eastern boundary with the A361 as well as hedgerows within the site that separate field parcels. There are a number of existing mature trees within the site including Poplar and Oak. All of the soft landscape features of significance within the site other than some along site boundaries is proposed to be removed to facilitate the development. This is understandable with respect to the hedgerows as otherwise this would present a significant constraint to laying out a suitably integrated development. It is disappointing however that there is no attempt to retain the existing mature trees and look to incorporate them into the development so that they can contribute ecologically as well as towards visual amenity. Whilst there are proposals for some new planting, this would take many years to achieve the same size and significance as the existing trees within the site. In officers' view this represents another example of the development being designed in a way that does not suitably respond to the site and its context as dictated by development plan policies.
- 8.47 To summarise matters of design and layout, officers have found that the proposals would create an unduly cramped MSA facility as part of a disjointed, illegible and poorly integrated development on the site that would in turn be unduly prominent and unsightly from the A361 as well as provide a poor quality environment within the site. As a consequence the proposals fail to respect the site's constraints as well as that of its context. The proposals are thus found to be in conflict with the requirements of Policies Banbury 15, ESD15 and SLE4 of the CLPP1, Policy C28 of the CLP 1996 as well as Government guidance contained within the NPPF.

Landscape

- 8.48 As already set out, Policy Banbury 15 requires development on the site to have a successful transition to the countryside with careful consideration given to design and layout to reduce overall visual impact. Policy ESD13 of the CLPP1 is also material and resists new development that would cause undue visual intrusion into the open countryside or be inconsistent with local character. Policy ESD15 is also relevant too and requires new development to respect local topography and landscape features and limit the impact of light pollution from artificial light on local amenity, dark landscapes and nature conservation.
- 8.49 In having regard to the impact of the proposed development on the landscape it must be recognised that the site is allocated for Class B1, B2 and B8 development such that the principle of developing the site is already established. In this respect it has already been established that there will be loss of this greenfield land to built development and a subsequent adverse impact on the wider landscape caused by the appearance of buildings in what otherwise formed part of the countryside. Officers have borne this in mind at all times and assessed whether the proposals as submitted would have a greater adverse impact on the landscape than would be reasonably expected as part of developing the site in accordance with its allocation.
- 8.50 As previously mentioned, the proposals will result in removal of a significant proportion of the existing hedgerow along the A361. The effect of this will be to expose development on the site to a far greater degree in views from the countryside to the east. This effect is exacerbated due to the fact that the land rises to the east and so the site features within views of wide expansive open countryside surroundings albeit the site is separated from it by the A361. The warehouse building proposed is substantial in size and located close to both the eastern and northern boundaries and so will be highly visible in views from these directions. A short distance to the north of the site runs a public footpath (120/7/10) that links Banbury with Chacombe through the countryside. The northern boundary of the site

is currently completely open and the public footpath is elevated relative to it. Views of the warehouse building from this public footpath would be substantial and the building presents a large and inactive elevation facing this direction and would therefore have a major adverse effect on views from it and therefore the experience of landscape character for the footpath's users. Whilst some tree planting is proposed along this northern boundary this would take many years to establish to anything close to an adequate degree in order to help partially screen or soften the visual impact of the building. In short, officers are not satisfied that the development in this respect has been designed appropriately in order to be suitably sensitive to the site's rural edge in the way envisaged and required through Policy Banbury 15. A warehouse building could for example be sited further back from the more sensitive northern and eastern boundaries and of reduced scale or re-located to a less sensitive position within the site.

- 8.51 The office buildings are of slightly less concern to officers with respect to their wider landscape impact due to their more central location within the site and reduced scale albeit officers have other concerns about their design and layout as detailed in the previous section of this report. Once again however the hedgerow along the A361 is shown to be removed and these office buildings are more exposed in views from the wider landscape to the east that they should be in order to appropriately respond to the site's content.
- 8.52 Whilst of less impact on the wider countryside, it should be noted that further off-site works are proposed by the applicant that are not shown in the submitted planning drawings. These are contained within appendices to the accompanying TA that detail highway mitigation schemes to reduce the traffic impacts of the development. This includes the widening of the M40 off-slips which would result in removal of a significant amount of the existing mature vegetation along the southwestern boundary of the site and would result in the development being far more prominent from the M40, J11 and Hennef Way in particular. Whilst of less concern with respect to the impact on the wider countryside and natural landscape due to this part of the site having more of an urban interface, it would nevertheless have a materially adverse effect on visual amenity as a result of negatively affecting views from the public realm that would see existing hedgerow, shrubs and grassed verges replaced with an engineered retaining wall and more prominent views of the MSA. There is no evidence that such adverse impacts would need to occur if the site was developed in accordance with its allocation through Policy Banbury 15 given the likely reduced need for improvements to the highway network and this further weighs against the proposals.
- 8.52 The landscape impact of the proposed MSA is however of substantial concern to officers. Whilst the buildings and structures on it are not of significant height, views of them will be exposed due to their siting close to the A361 and the associated removal of vegetation. It is however the impact of light pollution and the effect of artificial lighting within the landscape at night time that is of greatest concern. Due to their very nature, MSAs are in operation 24 hours a day, 365 days a year. This necessitates a heavily lit car park at all times together with the access roads, filling station, signage and services building in order to be safe and usable. This is in stark contrast to most typical employment type developments, particularly in Classes B1 and B2, which tend to cease operations in the evening and weekends with a consequent reduction in activity and the artificial lighting necessary. Warehouse developments can be in operation on a more continuous basis though are inherently less intensive by nature. Officers consider it highly likely that the proposed MSA would generate a level of light pollution and intrusiveness into the landscape at night time that goes far beyond that likely to result from uses for which the site is allocated. This would in officers' view be completely inconsistent with the rural

character of the surrounding countryside and fail to limit visual intrusion into the landscape as required by Policies Banbury 15, ESD13 and ESD15 of the CLPP1.

- 8.53 The applicant has submitted a lighting report which includes a plan indicating horizontal luminance from the lighting. This is not however the same as an assessment as to whether and to what extent the lighting could be seen from within the surrounding landscape particularly given the likely need for some higher level lighting of car parks and the removal of much of the existing boundary vegetation along the A361. Officers recognise that street lighting along a section of the A361 would be needed in any event if the site was to be developed in accordance with its allocation and do not specifically object to this albeit accept that it will have an adverse effect on the natural landscape at night. However the applicant has not satisfactorily addressed the matter of the effect of the new artificial lighting within the site on the surrounding landscape at night time and in the absence of compelling evidence to the contrary, officers are not content that the impact would be minor or to no greater extent than would be expected from a typical Class B1, B2 or B8 development.
- 8.54 Consequently officers have concluded that the proposals would have a significant and materially greater adverse impact on the natural landscape and landscape character during both the day and night time than if the site were to be developed in a reasonable way in accordance with its allocation. In this respect the proposals are found to be unacceptable and contrary to the requirements of Policies Banbury 15, ESD13 and ESD15 of the CLPP1.

Ecology

- 8.55 Policy Banbury 15 requires biodiversity to be preserved and enhanced as part of development on the site including through investigation of the presence of priority and protected species/habitats. Policy ESD10 of the CLPP1 also seeks a net gain for biodiversity as part of development and promotes a hierarchy that seeks to avoid significant harm before considering mitigation and then compensation of residual impacts. The NPPF contains similar policy provisions. The Council also has a statutory duty within the Natural Environment and Rural Communities Act 2006 to have regard to the purpose of conserving biodiversity as part of carrying out its functions.
- 8.56 The proposals would result in loss of habitat in the form of hedgerows, a number of trees and grassland. None of these features are of intrinsic ecological value albeit they still make a meaningful ecological contribution in comparison to built development. The application proposes some new planting to help mitigate the loss of habitat as well as balancing ponds that form part of the surface water drainage system for the development. The applicant has undertaken and submitted a Biodiversity Impact Assessment (BIA - a metric developed by Warwickshire County Council and based on DEFRA's metric) at the request of officers to help determine the overall impact on biodiversity resulting from habitat gain/loss. This is a quantitative assessment based on a calculation of the amount, value and condition of the habitat lost in comparison to that proposed as a result of the development. The applicant's BIA however indicates that the proposals would result in the overall loss of ecological habitat on the site and officers consider that even this has been undertaken far too generously with time to target condition of new habitat being too ambitious. If this is adjusted to be realistic, a more significant net loss is shown to occur. This however does not even take account of the habitat loss that would occur as a result of the proposed off-site highway works and if these are also taken into consideration, which they must be, the net loss of habitat would become even greater. The BIA does have its limitations and does not take account of certain qualitative factors but it does give a good indication of the likely ecological implications. The applicant contends that, despite the BIA calculations indicating net

habitat loss, the proposals would significantly increase the diversity of habitat on the site. Whilst there may be some truth to that, there has been no assessment of the value of that diversity and the quality of that habitat needs to be considered too. New habitat within and around a site would, as a result of the proposed development, be subject to a far greater intensity of use, exposed to substantial artificial lighting together with noise and air pollutants from motor vehicles. The BIA acts as a strong starting point for considering overall ecological implications and officers' do not think it sufficient to try to justify departing from its conclusions by relying solely on subjective qualitative claims about ecological impacts without considering the full range of future effects both positive and negative. Officers therefore support the conclusions of the Council's ecologist in finding that the proposals would be likely to result in net ecological harm contrary to the specific requirements of Policies Banbury 15 and ESD10 of the CLPP1 as well as national policy contained in the NPPF.

- 8.57 Where significant ecological harm would result from development proposals then, in line with both local and national planning policy, the first step is to avoid such harm before considering mitigation and then compensation of any unmitigated residual harm. Officers however are not convinced that the proposals have reasonably attempted to avoid the harm caused by taking any and all reasonable measures to design the scheme differently. Even then, officers remain convinced that a proposal in accordance with the site's allocation should be able to avoid some of the harm caused by these proposals and be more able to satisfactorily mitigate any harm within the site. The Council must have considered this to be the case in taking the decision to allocate the site given the requirements set out within Policy Banbury 15. There is no justification whatsoever for considering biodiversity offsetting to be appropriate and therefore using financial contributions towards ecological improvements off-site given that the applicant has not followed the hierarchy set out in Policy ESD10 and the NPPF and, in any event, there is no offsetting scheme identified for the applicant to contribute towards.
- 8.58 It is necessary to give particular consideration to any potential harm caused to statutorily protected species as well as those listed of being of principal importance to nature conservation. Officers are satisfied that the ecological appraisal carried out by the applicant demonstrates that the proposals would not give rise to harm to protected or priority species on the site subject to the mitigation measures set out in the recommendations within that report. What is more likely is that the lighting required off-site for safe use of the public footpath within the underpass could affect nocturnal wildlife. Surveys undertaken by the applicant's ecologist indicate that the affected area is not a habitat for otter or likely to be home to roosting bats. It is however likely that the river channel is used by commuting bats and artificial lighting could disrupt their environment. Sensitive lighting would therefore be needed and designed in such a way that there was very limited light spillage beyond the footpath whilst ensuring adequate night time visibility to meet public safety requirements. There remains the possibility that light spill would adversely affect commuting bats even with the most sensitive lighting. However, such lighting would be necessary to provide safer access to the site even if the site was developed in accordance with its allocation and there is nothing inherently more harmful about these proposals for the site than would otherwise be the case. Officers are therefore content to accept that there could be potential for minor adverse impact on bats as part of the proposed development but that this is acceptable bearing in mind the lack of alternatives for pedestrian access and the fact that development (albeit of a different kind) is committed on Banbury 15 and any development scheme on it would need to have similar requirements in order to promote safe and sustainable access to it.
- 8.59 In conclusion on matters of ecology, officers have found that the proposals would have the potential to have a minor adverse effect on the local bat population as a

result of off-site lighting requirements but that this is justifiable. In other respects the proposals should not cause material harm to other protected and priority species or habitat. However, there is strong evidence that the proposals would result in an overall net loss of habitat for wildlife by unnecessarily removing existing habitat and inadequately mitigating losses that would occur both on and off the site. In this respect the proposals are inherently environmentally unsustainable and contrary to the requirements of Policies ESD10, Banbury 15 and national policy contained within the NPPF.

Impact on Town Centre(s)

- 8.60 Policy SLE2 of the CLPP1 closely reflects national planning policy with respect to protecting the viability of town centres as set out in the NPPF. This seeks to ensure that main town centre uses (as defined in the NPPF) are provided first in town centres before considering edge of centre and then out of centre sites except where sites are already allocated for those purposes in an up-to-date development plan. The policy also requires impact assessments to be carried out where main town centre uses are proposed outside of a town centre and resists such proposals where significant harm to a town centre would result. Following amendments made during the life of the planning application the previously proposed hotel (a main town centre use) has been removed and so does not need to be considered any further.
- 8.61 The application proposes office development which is defined as a main town centre use but as the site has been allocated in the CLPP1 to include office development there is no need to consider the town centre impacts any further in this respect. Warehouses are not defined as main town centre uses and do not need to be considered with respect to their impact on a town centre.
- 8.62 An MSA is a sui generis type of development albeit it includes a mix of retail, café and restaurant facilities that are main town centre uses. It is proposed to be located on the edge of Banbury and given its scale officers consider that it is only the Banbury town centre that might realistically be affected by it. The applicant has not submitted either a sequential or impact assessment in relation to the uses within the MSA to justify its location outside of Banbury town centre and consider the impact upon the town centre. However, officers do not consider this to be of concern.
- 8.63 In considering more central town centre sites it is necessary to consider alternative sites that are suitable and available for a similar type of development to that proposed rather than disaggregating all of the component main town centre uses. Officers consider the MSA to be a standalone independent feature of the development proposals that could be developed and operate separately from the remainder of the proposals. Furthermore, the other Class B uses proposed would not need to be subject to a sequential test in any event due to them falling within the site's allocated use. In applying the sequential test it would therefore be necessary to search for alternative sites closer to Banbury town centre for the MSA as opposed to the whole of the proposed development. Nevertheless, it is simply unrealistic to expect an MSA to be provided within or close to Banbury town centre or indeed any town centre as there would clearly not be a suitable site available for this type of development particularly given the associated transport implications of bringing motorway traffic in to the town centre. Officers are therefore satisfied that in this case there would no benefit in the applicant undertaking a sequential test of the MSA as a whole given that there are particular considerations that justify not following the specific requirements of local and national policy in this respect. In essence, whilst an MSA may contain a number of constituent main town centre uses, in its totality it is not a main town centre use or, at the very least, not one that would be suitable in a town centre.

- 8.64 The proposed MSA includes retail and leisure floor space exceeding 2000sqm outside of a town centre. This would ordinarily trigger a requirement within Policy SLE2 for an impact assessment to be undertaken. The applicant has not submitted such an assessment but again officers are not concerned in this respect. The type of retail and leisure facilities in an MSA are not considered likely to draw trade away from similar uses within Banbury town centre. Many of the customers would be passing traffic on the M40 or local highway network that would not have previously made trips into Banbury town centre in order to consume the types of convenience goods and services that would be offered at MSAs. As well as passing traffic it could potentially serve staff employed at nearby businesses though these would be unlikely to have diverted into Banbury town centre anyway for the types of convenience goods that they would be seeking. Instead they would have previously been likely to use the retail and café/restaurant facilities offered within the nearby Banbury Gateway shopping park and in the main would probably continue to do so in preference to an MSA which is typically an expensive environment in which to purchase convenience items.
- 8.65 In short, officers are satisfied that even in the absence of any evidence provided by the applicant, that the particular nature of the proposals would mean that they would not be likely to have any material adverse effect on the vitality and viability of Banbury town centre (or any other town centre further afield). Consequently officers have no objections to the proposals with respect to its impacts on town centres and find no conflict with the overall aims of Policy SLE2 of the CLPP1 as well as the NPPF.

Flood Risk and Drainage

- 8.66 Policies ESD6 and ESD7 of the CLPP1 require proposals to be safe from the risks of all types of flooding and that new development does not increase flood risk either locally or elsewhere.
- 8.67 A flood risk assessment (FRA) has been submitted as part of the application which has been reviewed by both the Environment Agency and drainage engineers at OCC – both agree with its findings and recommendations. The northern extent of the site is shown to be at a higher risk of fluvial flooding and so built development is avoided in this area as is other development that could increase flood risk. The remainder of the site is at a low risk of flooding and so suitable for development subject to it not increasing the wider risk of flooding which the FRA satisfactorily demonstrates. Furthermore, the FRA sets out suitable measures within a drainage scheme to attenuate and treat rainwater run-off on the site generated from increases in impermeable surfacing as a result of the development. There is also an existing water main that passes through the site close to its northern edge and the applicant has avoided any development that would affect this easement. Subject to conditions on a planning permission requiring the development to be carried out in accordance with the FRA as well as a condition requiring the submission and approval of further details of the surface water drainage scheme then officers are satisfied that the proposals are acceptable with respect to matters of flood risk and drainage.

Energy Efficiency

- 8.68 Policies ESD1-ESD5 of the CLPP1 require new development to reduce carbon emissions, use resources more efficiently, incorporate renewable energy provision and consider opportunities for combined heat and power facilities. The applicant has not submitted an energy statement or any document outlining how the proposals accord with these policies or set out a robust justification otherwise. All new non-residential buildings on developments of this size should meet BREEAM 'very good' standard and there is no evidence as part of the planning application to show that this is achieved. This could affect the design and layout of buildings and so cannot be subject to a condition. No information is provided on any significant renewable

energy generation as required by Policy EDS5 and again this cannot be subject to a condition as it cannot be assumed that this can be adequately complied with at a later stage. Officers also cannot say whether the proposed development would be sustainably constructed having regard to the criteria set out in Policy ESD3 which requires strategic site allocations to contribute towards carbon emission reductions and to wider sustainability. In the absence of any information in this regard, adequate or otherwise, officers simply cannot conclude that the proposals would represent a sustainable form of development and as a result the proposals are in conflict with the requirements of Policies EDS1-ESD5 of the CLPP1.

Air Quality

- 8.69 Policy BSC8 of the CLPP1 recognises that planning decisions can have an effect on air quality which contributes towards health and wellbeing. Policy ENV1 of the CLP 1996 resists new development that would cause materially detrimental environmental pollution. The NPPF advocates planning policies and decisions sustaining compliance with EU and national pollutant objectives including through cumulative impacts on air quality from individual development proposals. The NPPF further adds that planning decisions should ensure that new development in Air Quality Management Areas (AQMA) is consistent with the local air quality action plan for that AQMA.
- 8.70 The applicant has submitted an air quality assessment as part of the planning application. This recognises that the proposals would increase traffic flows and consequent congestion including on Hennef Way. However, as officers do not accept the robustness of the traffic modelling undertaken the applicant, the congestion is potentially likely to be worse than that assessed by the applicant with consequent air quality implications given that queueing and stop-start traffic is the greatest contributor to air pollution.
- 8.71 The application site is not within an AQMA and the applicant has demonstrated that pollutants in and around the site will not increase to significant levels as a result of the development or exceed national air quality objectives. However, Hennef Way falls within the Council's AQMA No.1 due to existing air quality problems principally as a result of nitrogen dioxide levels caused by road traffic, particularly diesel vehicles. The Hennef Way AQMA experiences nitrogen dioxide levels significantly above the national objective though there are only 3 residential properties within it. Nevertheless, these properties already experience high levels of nitrogen dioxide that is well above the national objective. The proposals will result in a small increase in levels of nitrogen dioxide emissions within the Hennef Way AQMA and therefore further exceedances of the existing high levels at these residential receptors. The air quality assessment submitted by the applicant probably under-estimates the increases due to aforementioned deficiencies with the traffic modelling.
- 8.72 Officers accept that an increase in nitrogen dioxide levels for receptors within the Hennef Way AQMA is likely as a result of development on Banbury 15 whether or not the site is developed in accordance with its allocation. However, as the traffic levels and therefore congestion is expected to be significantly worse as a result of the inclusion of the proposed MSA rather than just the allocated Class B1, B2 and B8 uses, the adverse air quality implications are expected to be worse. Nevertheless, the applicant proposes mitigation measures within the air quality assessment based on an environmental damage cost calculation. Officers accept that this is an appropriate methodology to calculate and mitigate air quality impacts where they are unavoidable. The air quality damage costs are calculated by the applicant to be £733,925.42 in the submitted air quality assessment. Officers accept that the measures proposed in the air quality assessment to minimise and mitigate air quality impacts during construction of the development are adequate. However, the operational mitigation measures are minimal and many of the suggestions are

not additional measures but ones that would be required in any event to comply with other development plan policies such as highway mitigation measures to reduce traffic congestion, upgrades to the public footpath, cycle parking provision on the site and provision of new bus stops on the A361. There is the commitment to measures within the submitted framework travel plan but this includes various vacuous statements that have no detail and their deliverability and future enforceability is unclear. Even accepting the environmental damage cost as £733,925.42 (which assumes the TA is robust which officers do not accept) it is not remotely clear how the investment associated with the mitigation measures set out in the air quality assessment would get close to that figure given that many of the measures outlined are standard requirements under other planning policies anyway and are essentially being double counted. The remainder are nebulous commitments that do not do reflect the harm caused by the proposed development and the need for the planning system to properly consider and seek to address the impacts of development on public health. Consequently, the proposals in this respect are considered to be in conflict with the requirements of Policies BSC8 of the CLPP1, ENV1 of the CLP 1996 and national planning policy contained in the NPPF.

Infrastructure/Planning Obligations

- 8.73 Policy Banbury 15 requires new development on the site to make contributions to other transport improvements including improvements to J11 and Hennef Way, bus services and walking and cycling routes. Policy INF1 of the CLPP1 also requires development proposals to demonstrate that infrastructure requirements can be met.
- 8.74 Officers have set out substantial concerns about the proposals in this report that would not be able to be overcome by planning obligations. Nevertheless, if Members disagreed and were minded to grant planning permission then officers consider that the following items of infrastructure need to be satisfactorily secured via planning obligations in order to mitigate some of the adverse impacts of the development. These are listed as follows:
- A financial contribution towards the cost of future maintenance of the improvement works to the M40 underpass and public footpath;
 - A financial contribution of £123,00 (index linked) towards the enhancement of bus services on the A361 allowing employees to more easily travel to and from the site as an alternative to car travel;
 - Financial contribution of £2,040 (index linked) towards the monitoring of the Framework Travel Plan;
 - Financial contribution towards wider improvements to the Banbury transport network in line with the formula set out in the Council's Developer Contributions SPD;
 - To secure the delivery of the off-site highway mitigation schemes as detailed in the applicant's Transport Assessment;
 - To secure provision of the new bus stops and associated infrastructure on the A361.
- 8.75 It is not clear whether the applicant would be agreeable to making these legally binding commitments through covenants in a planning obligation. At the time of writing this report there is no satisfactory legal agreement or undertaking in place and it must be assumed at this stage that there will be no such agreement which means that the proposals do not make sufficient provision towards the infrastructure necessary to mitigate its impacts contrary to the requirements of Policies Banbury 15, INF1 and SLE4 of the CLPP1.

Other Matters

- 8.75 The proposals have the potential to generate business rates for the Council of approximately £1m based on current arrangements. Whilst local finance considerations can be material, caution must be exercised when deciding whether and how much weight should be afforded to this as it is necessary for the local finance consideration to be directly connected to the development. The Planning Practice Guidance is clear that *"it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority"*. There is little to connect business rates directly to the acceptability of the proposed development and officers advise Members not to give this any material weight. In any event, it would not be appropriate for what is an otherwise unsustainable development that is in conflict with an up-to-date development plan to be considered acceptable off the back of financial benefit for the Council. It is also worthy of note that business rates resulting from the proposed development may well be less than that likely to be received from a development that was in accordance with the site's allocation through Policy Banbury 15. The MSA in particular is an inefficient creator of rateable floor space and a more efficient development in accordance with the allocation that comprised a number of offices, warehouse and industrial premises is likely to generate greater business rates for the Council. As a result, officers suggest that any 'benefit' associated with the proposed development generating business rates should not be given weight.
- 8.76 A small number of third parties have raised queries about noise generated by the proposed development and its associated traffic. The uses proposed on the site are not inherently noisy activities though the MSA would have activity over a 24 hour period and the warehouse could experience night time HGV movements. The nearest residential properties are however a significant distance away from the site and so should not experience materially harmful noise levels. The nearest surrounding uses are commercial operations, separated in any event by the M40, and not particularly vulnerable to the type of noise or nuisance likely to be generated by the proposed development. Traffic levels on surrounding roads will inevitably increase though there is no evidence to suggest that this would lead to cumulatively significant levels of noise disturbance for occupants of surrounding properties though it is not doubted that traffic movements would increase including through nearby villages and this features as part of officers' wider concerns about the traffic impacts associated with the development. The noise implications of this traffic is however difficult to assess and there is not sufficient evidence to conclude that it would be significantly and demonstrably harmful to the living conditions of residents of these villages or the character of the villages. This may add to the harm associated with the proposed development but it is not considered to be sufficient for officers to conclude that it is unacceptable or contrary to development plan policy in this respect.
- 8.77 Northamptonshire County Council (NCC) as the neighbouring local highway authority has raised a couple of concerns about the inadequacy of the assessment of the impact on the A422/B4525 roundabout junction within the applicant's TA. This junction experiences high traffic levels and NCC would expect an assessment as to whether the junction could be expected to operate within reasonable capacity in 2021 and 2026 as the forecast years. Whilst this does not relate to officers' main concerns about congestion at J11 and its various approach roads, it does seem reasonable to conclude that the TA should address these claimed shortcomings in order to be to ascertain whether there could be future problems at this junction which the proposed development could contribute towards. Officers would therefore expect this to be addressed as part of a robust TA. NCC also raises the lack of a proposed formal crossing of the A361 in order for pedestrians to access the southbound bus stop from the development. OCC has also raised this concern though are not of the view that it needs to be a signalised crossing but rather a

pedestrian refuge. Officers agree with these concerns and would expect to see improved pedestrian access to the bus stops in order to properly encourage the use of sustainable modes of travel in accordance with the requirements of Policy SLE4 of the CLPP1 as well as national planning policy contained in the NPPF.

9. PLANNING BALANCE AND CONCLUSION

- 9.1 Legislation requires decisions to be taken against the development plan unless material considerations indicate otherwise. The NPPF supports this position with respect to up-to-date Local Plans. The CLPP1 is an up-to-date Local Plan and proposals that are contrary to it should be refused unless there are significant overriding material considerations. Officers consider the proposals to be contrary to a whole array of development plan policies such that, for reasons set out in this report, both the principle of the proposed development is unacceptable together with a whole range of its associated adverse effects including in relation to traffic and transport, its design approach, ecological and landscape impact as well as air quality, infrastructure impacts and construction sustainability. An up-to-date Local Plan has to have been prepared having regard to current national planning policy and guidance and, with the CLPP1 having been found sound at examination, it must represent a sustainable strategy for planned growth in the District through to 2031. A departure from it would need to be very clearly justified having regard to the particular circumstances of the case. It has been established through court judgements that the presumption in favour of sustainable development within the NPPF does not apply to proposals that are in conflict with an up-to-date Local Plan and so a generic balancing exercise between the benefits and disbenefits of a proposal in isolation from the sustainable strategy inherent to the Local Plan is not appropriate. The NPPF is a material consideration though as the CLPP1 has been prepared in accordance with this there is no reason to conclude that national planning policy in the NPPF materially differs from the CLPP1 or provides justification for departing from it.
- 9.2 Nevertheless, officers have considered whether there are any overriding benefits associated with the proposals that would outweigh the substantial identified conflict with the development plan. The proposals would generate some employment both during construction and operational stages (even if not to the same degree and type required by Policy Banbury 15) and in turn it would contribute towards the local economy and help to provide jobs to meet planned housing growth. It would also provide an additional facility for motorists even if there is not a particular safety or welfare need for an MSA. The proposals would also lead to some safety improvements to public footpath 120/7/10 to the north of the site which would benefit some of the existing users of it. There is also a possibility that the lorry parking facility within the proposed MSA could relieve some of the overnight lorry parking that takes place in the industrial estates off Overthorpe Road though it is not clear whether such lorry drivers would use the MSA's parking facilities, particularly if there is a charge. The proposals also include provision of a handful of parking spaces at the northeast of the site to enable improved access to the Cherwell Country Park to the north which is an objective of the Council through Policy Banbury 14.
- 9.3 The above benefits are however not significant either individually or cumulatively and in officers' view would not come close to outweighing the substantial conflicts with the development plan and the harm that would be caused by the proposed development including: the reduced provision of jobs overall and the compromises to the site's ability to provide the necessary employment in the medium-long term, the traffic congestion and consequent economic and social implications caused by delays on the highway network at the principal artery into Banbury as well as the associated risks to highway safety, the lack of safe and suitable access to the development site, likely increase in rat-running on rural roads in Northamptonshire

and Oxfordshire to avoid the severe congestion, the poor quality environment within the site and adverse effect on visual amenity caused by its inadequate design and layout, the substantial adverse impacts on local landscape character and the wider landscape, the harm caused to biodiversity through net loss of habitat, the minor harm potentially caused to bats commuting along the River Cherwell, the worsening of air quality in the local area and the lack of provision for the sustainable construction and operation of the development. In the absence of a satisfactory planning obligation in place there is also a lack of commitment to carry out the necessary highway works to reduce the severe traffic impacts that would be caused as well as make contributions towards bus service enhancement and wider strategic transport mitigation schemes.

- 9.4 The proposals should therefore be refused for the reasons set out below given that they are in conflict with an up-to-date development plan and the absence of overriding material considerations to justify departing from the development plan.

10. RECOMMENDATION

That Planning Committee refuses to grant planning permission for the following reasons:

1. In the absence of a compelling and overriding demonstrable need for a motorway services area on the site, the proposed development would result in the loss of a substantial part of a strategically allocated employment site to an unnecessary alternative and less efficient employment generating use that would jeopardise the long term ability to deliver a sufficient amount and variety of Class B1/B2/B8 development on the site and therefore the jobs needed to support the local economy and support planned housing growth. The proposals are therefore contrary to the requirements of Policies SLE1 and Banbury 15 of the Cherwell Local Plan 2011-2031 Part 1 as well as Policy TR8 of the Cherwell Local Plan 1996 together with Government guidance set out in the National Planning Policy Framework.
2. Having regard to the cramped nature of the motorway services facility, the disjointed layout of development throughout the site, the poor integration between the motorway services area and the main employment development, the large architecturally bland buildings, the inappropriate and incoherent siting of buildings and general layout to the development, lack of adequate integration of existing trees and hedgerows together with new soft landscaping as well as the poorly defined and unsightly appearance of development as experienced at the entrances to the site as well as from the A361, the proposals result in a congested, poorly designed and illegible form of development that fails to demonstrate a suitably high quality and holistic approach to creating a new commercial district at the rural edge of Banbury as required by Policies Banbury 15 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Policy C28 of the Cherwell Local Plan 1996 as well as Government guidance set out in the National Planning Policy Framework.
3. As a result of the poorly designed internal road and parking layout as well as cramped structure to the proposed motorway services area having regard in particular to the inappropriate siting of and access to the petrol filling station, awkward positioning and unsuitable arrangements of the lorry, coach and caravan parking as well as the absence of clearly defined and safe walking routes for pedestrians to and from the service building, the motorway services area would constitute a congested and potentially unsafe facility that would be illegible to its various users creating numerous conflicts between them. As a result the proposed motorway services area would not function effectively and the quality of the

environment within the site is likely to be very poor which in turn is likely to lead to congestion entering the motorway services area and consequently traffic backing up onto the A361 and the M40 J11 roundabout at peak times to the detriment of users of the highway network. In this respect the proposals are therefore contrary to the requirements of Policies ESD15 and SLE4 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance set out in the National Planning Policy Framework.

4. The planning application has not been supported by robust assumptions and modelling within the Transport Assessment leading to what is likely to be an under-projection of traffic generation and therefore under estimate of impacts on congestion, queuing and safety on existing roads and junctions. Notwithstanding these significant concerns and taking the Transport Assessment at face value, it is considered that even with the mitigation measures proposed the development would cumulatively give rise to severe congestion at junctions on the M40 J11 roundabout causing significant additional disruption to traffic flows on the highway network as well as consequent safety hazards where queuing cannot be adequately accommodate within the highway. To compound matters, there is significant concern about the potential to deliver a number of the highway mitigation schemes that are proposed by the applicant which involve significant off-site works that both the local highway authority and Highways England have not specifically agreed to and which if not implemented would lead to even greater congestion and safety risks on the road network. The development would therefore have unacceptable impacts on traffic congestion, highway safety, the amenity of road users as well as the local and wider economy particularly given that this would affect the principal vehicular entry into Banbury. In this respect the proposals are contrary to the requirements of Policy TR8 of the Cherwell Local Plan 1996 as well as Policies Banbury 15 and SLE4 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained in the National Planning Policy Framework.
5. Both the proposed primary roundabout access and secondary priority junction have not been demonstrated to be safe and suitable for all road users due to the inadequate visibility splays for the road speeds as well as the lack of adequate assessment of their capacity given their expected use by a significant number of Heavy Goods Vehicles. The proposed development could therefore adversely affect the safety of users of the highway as well as contribute towards additional congestion on the highway network due to the potential inadequate capacity of the accesses proposed. In this respect the proposals are considered to be contrary to the requirements of Policies SLE4 and Banbury 15 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance contained in the National Planning Policy Framework.
6. Having regard to the scale and siting of the proposed warehouse building, the prominent siting of the proposed petrol station and motorway services building, the loss of a significant amount of existing boundary vegetation as part of highway works and the 24 hour nature and high intensity of use of a motorway services area, the development would be highly visible from within the surrounding landscape including from numerous public vantage points and would have a substantial adverse effect on local landscape character both in the daytime and night time which does not represent a well-designed approach to the urban edge that sensitively transitions to the countryside contrary to the requirements of Policies Banbury 15, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance set out in the National Planning Policy Framework and the Planning Practice Guidance.
7. The proposals are considered to result in a net loss of ecological habitat due to the

quantity and value of habitat lost both on the application site as well as through associated off-site highway works that are not shown to be adequately mitigated or outweighed by creation of new habitat as part of the development. The proposed development would therefore fail to preserve and enhance biodiversity contrary to the requirements of Policies Banbury 15 and ESD10 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance set out in the National Planning Policy Framework.

8. The planning application has not been accompanied by an Energy Statement to demonstrate whether the buildings proposed within the development are of an energy efficient design and construction in order to minimise carbon emissions and meet BREEAM 'very good' standard and neither is there any proposal (or a robust justification otherwise) for a failure to include provision for significant on-site renewable energy generation or the utilisation of District Heating or Combined Heat and Power. In the absence of these details it must be concluded that the proposals fail to take the opportunities available to deliver sustainable new development contrary to the requirements of Policies Banbury 15, ESD1, ESD2, ESD3, ESD4 and ESD5 of the Cherwell Local Plan 2011-2031 Part 1.
9. The proposed development would result in increases over and above an existing exceedance of national mean air quality objectives for nitrogen dioxide for residential receptors in Hennef Way within Cherwell District Council's Air Quality Management Area No.1. In the absence of adequate measures to ensure that this increase is satisfactorily mitigated through additional, specific, enforceable and deliverable measures that could be secured as part of the development then it must be concluded that the proposed development would be at odds with both local and national air quality objectives contrary to the requirements of Policy BSC8 of the Cherwell Local Plan 2011-2031 Part 1 and Policy ENV1 of the Cherwell Local Plan 1996 as well as Government guidance contained in the National Planning Policy Framework.
10. In the absence of the completion of a satisfactory planning obligation, the development cannot adequately secure enhanced bus service provision, off-site pedestrian improvements to promote sustainable access nor mitigate any of its identified severe adverse impacts on the local highway network such that the development would give rise to further severe cumulative congestion beyond that already expected on surrounding roads as well as increased risks to highway safety contrary to the requirements of Policies SLE4 and INF1 of the Cherwell Local Plan 2011-2031 Part 1 as well as Government guidance contained in the National Planning Policy Framework.