

**The Old Malthouse  
St Johns Road  
Banbury**

**18/01158/F**

**Applicant:** Mr M Morrison Morrison Property Consultants Limited

**Proposal:** Change of use from B1(a) offices to provide 25 No residential apartments with ancillary parking, bin storage and amenity area (Resubmission of 17/02167/F)

**Ward:** Banbury Cross And Neithrop

**Councillors:** Cllr Hannah Banfield  
Cllr Surinder Dhesi  
Cllr Cassi Perry

**Reason for Referral:** Major Planning application.

**Expiry Date:** 27 September 2018      **Committee Date:** 20 September 2018

**Recommendation:** Refuse

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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **Proposal**

The application seeks permission to convert the existing Grade II listed office into 25 flats. This would largely consist of internal works to create a development over 4 floors. Some external works would be undertaken including new windows and roof lights is also proposed. The parking would be retained at the ground floor and to the front of the building.

### **Consultations**

The following consultees have raised objections to the application:

- CDC Conservation, Banbury Civic Society, Georgian Group

2 letters of objection have been received including 1 from a potential purchaser of the building for office use and 1 letter of support have been received.

### **Planning Policy**

The site is a Grade II Listed Building and lies within the Banbury Conservation Area. It is also an existing employment site.

The application has been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

### **Conclusion**

The key issues arising from the amended application details are:

- Loss of employment use;
- Heritage
- Affordable housing
- Highways

The report looks into the key planning issues in detail, and officers conclude that the proposal is unacceptable against the relevant policies for the following reasons:

1. Unjustified loss of an existing employment use.
2. Harm to the listed building through the alterations to the historic roof structure

The other elements of the scheme, on balance, are considered to be acceptable.

## **RECOMMENDATION - REFUSE**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## **MAIN REPORT**

### **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is a Grade II listed former malthouse located on the corner of St Johns Road and Calthorpe Road to the south of Banbury town centre. It is also located within Banbury Conservation Area and within the setting of numerous listed buildings including the terrace properties to the south of the site on Calthorpe Road.
- 1.2. The property is an attractive brick building with a symmetrical frontage consisting of sash windows and stone and stucco detailing giving a grand appearance. It has the appearance of a two storey building from St Johns Road. The building was originally used as a maltings but has had a series of uses since then with its authorised use currently as a B1 Office use. The ground floor of the building has partially been converted to car parking with access provided to the western side of the building. Car parking also exists to the front of the site which sits perpendicular to the St Johns Road.

### **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 2.1. The application seeks to address the reasons for refusal of the previous scheme (See section 3 below) by providing additional marketing information in relation to the loss of the employment use and also by providing amended details and additional information in relation to the impact on the listed building and conservation area.
- 2.2. The current application seeks permission to convert the office to 25 flats (22no 1 beds and 3no 2 beds). This would consist of a number of internal works, which are subject to a separate listed building consent on this agenda (18/01159/LB).

#### *Internal works*

- 2.3. Whilst the internal works do not technically require planning permission and are controlled through the listed building consent process the works do stem as a product of the change of use. Internally a new ground floor flat would be provided in the south east corner of the building on an existing area of parking. The building currently has office accommodation across the first floor and also part of the second floor office at the eastern end of the building. The remainder of the second floor and space above consists of a large roof void which houses the complex roof structure of the building.

- 2.4. The proposals would extend the second floor across the entire building (with the exception of three voids to the centre of the building in the communal area) and also introduce a new third floor at either end of the building. The floor space would be divided into individual flats. A communal area would exist at the centre of the building from first floor level along with a second floor gallery area.

#### *External works*

- 2.5. The external works would consist of the provision 3 new windows in the east elevation, a new second floor window to the west elevation, and alterations to some of the fenestration on the rear elevation of the building and numerous rooflights and lanterns to the roof of the building.
- 2.6. At ground floor 22 parking spaces would be provided consisting of the existing frontage parking and through utilising the existing ground floor parking. Cycle parking and bin store would also be provided to the rear of the site.
- 2.7. An area of open space to the rear of the site, which is on higher land than the ground floor of the building, would be retained for a private amenity space to serve the future residents of the flats.

### **3. RELEVANT PLANNING HISTORY**

- 3.1. The following planning history is considered relevant to the current proposal:

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
18/01159/LB	Change of use from B1(a) offices to provide 25 No residential apartments with ancillary parking, bin storage and amenity area (Resubmission of 17/02168/LB)	Pending Consideration
77/00461/N	Change of use from storage of furniture to storage and distribution to the trade only of domestic electrical spare parts	Application Permitted
89/00498/N	Demolition of lean to store. Formation of first floor level offices with additional ground floor offices and car parking	Application Permitted restricted to Class B1(a)
05/00103/F and 10/00221/F	Erection of 1 No. detached dwelling (as amended by plans received 23.03.05 and plan Nos. P381/10B & P381/12B received on 19.04.05).	Application Permitted
15/01389/F	3 bedroom dwelling	Application Permitted
17/02167/F	Conversion of building from B1(a) Offices to 25 residential flats, with ancillary parking, bin storage and amenity area.	Application Refused
17/02168/LB	Conversion of building from B1(a) Offices to 25 residential flats, with ancillary parking,	Application Refused

bin storage and amenity area.

- 3.2. The above applications 17/02167/F and 17/02168/LB were refused planning permission and listed building consent at Planning committee in February 2018 as the proposal was considered to result in a unjustified loss of an employment use without robust marketing contrary to Policy SLE1 of Cherwell Local Plan Part 1 (2015) and the proposal was also considered to result in unjustified harm to the significance of the listed building and conservation area as a result of the internal works to the building and the number of roof lights proposed.

#### **4. PRE-APPLICATION DISCUSSIONS**

- 4.1. The following pre-application discussions have taken place with regard to this proposal:

<u>Application Ref.</u>	<u>Proposal</u>
17/00211/PREAPP	Residential conversion of 25 flats

It was advised that based on the information provided that the proposal would conflict with Policy SLE1. Limited information was provided in regard to the internal alterations and concerns were raised regarding the number of roof lights and terraces in the roof of the building and the impact this would have on the building. Concerns were also raised over the amenity of the neighbouring property and the future amity of some of the residents given the arrangement of the flats. It was also stated that the Council would be seeking an affordable housing contribution commuted sum. Concerns were also raised over the level of parking. Overall it was concluded that based on the information provided by the applicant officers would be unlikely to support the application.

#### **5. RESPONSE TO PUBLICITY**

- 5.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 09.08.2018, although comments received after this date and before finalising this report have also been taken into account.
- 5.2. Objections have been received by 2 parties and 1 letter of support has been received. The comments raised by third parties are summarised as follows:
- A company who are interesting in purchasing the site for an office stated they have been looking for larger office premises in Banbury and found very few offices of this size (8,000 – 12,000sqft) with good parking, open plan working environment, historic character, and close to the town centre and train station which would be beneficial for staff. Other offices in the Banbury do not often meet these requirements. Despite being shown around the building and making 3 offers (1 below asking price, 1 at asking price and 1 substantially higher than asking price) they were all refused. The 3<sup>rd</sup> offer remains open and they claim to be ready to proceed with the purchase. They state that the property is marketed for £750,000 but were informed the seller will only accept offers in excess of £1.8 million. They also state that the seller made it clear that they intended to file another planning application to turn the building into residential flats and were clearly not interested in pursuing a sale as an office. In reference to para 121 of the NPPF as the Council has a 5 year land supply and there is no need to convert the office to

meet housing needs. Removing an office space would increase the likelihood of company moving its highly educated and skilled workforce including, accountants, product designers and marketing professionals to another town or city. This isn't just a problem for Omlet. Without good offices and innovative growing companies, the town centre of Banbury will be much diminished and its long-term vitality and viability will be harmed

- In favour of converting buildings in the town centre to residential. Assuming the historic feature of the building are retained and conserved the site would make an attractive residential block and would complement surrounding uses. It would appear there is little prospect of the building being used for offices.
- Overdevelopment of the site. Other development in the area were limited to fewer flats.
- Congestion and lack of car parking provision which is already stretched in local area.

5.3. The 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 COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. BANBURY TOWN COUNCIL: **No objections.**

### STATUTORY CONSULTEES

6.3. HISTOIC ENGLAND: **No comment.** Advice should be sought by Council's Conservation Officer.

6.4. GEORGIAN GROUP: **Object.** Acknowledge the fact that the applicant has gone some way to addressing concerns about loss of historic fabric but still feel that the number of rooflights is excessive. The justification presented is marginally more robust but essentially a series of modern intrusions into historic fabric were inserted to create rooflights – as visible in the 1929 photograph. These were then removed to put the roof back to its original early nineteenth century form. Maintain objection on the grounds that the number of proposed rooflights is excessive.

6.5. As previously stated the building is *'a much-altered building whose main significance lies in its external shell, its unusual roof structure, its position within the streetscape'*. The unusual roof structure is key to the significance of the historic building. Whilst they appreciate the fact that there is a desire to keep the majority of the roof trusses, they have concerns over the removal of sections and the raising of sections. This is the most significant fabric in the building and every endeavour should be made to protect it.

6.6. THAMES WATER: **No objections.**

### NON-STATUTORY CONSULTEES

- 6.7. CDC CONSERVATION: **Object.** The previous application was refused on the basis of lack of a robust marketing exercise and the 'less than substantial' harm to the listed building through the alterations to the roof, subdivision of the internal space and the number and extent of rooflights proposed on the building. No evidence had been provided that residential was the optimum viable use. The reasons for refusal have not been overcome in this latest application.
- 6.8. It is understood that a full marketing report is to be submitted, but regardless of this there is documented evidence of an offer for the building (for use as an office) above the asking price. Therefore unless it can be demonstrated the offer is not viable it is not possible to demonstrate that the building cannot be utilised for its current (office) use. The harm caused to the building is less than substantial, but is to the core significance of the building (the roof structure) as identified by the Heritage Impact Assessment. If the building were not capable of being utilised for any other use the harm caused could be justified by the public benefit of finding a new use for the building, but at the current time that is not the case.
- 6.9. The application has demonstrated that some of the vertical struts to be removed are of late 20<sup>th</sup> century origin and this has been confirmed on site, but there are still proposed alterations to the historic roof structure including the removal of and cutting of historic purlins and the alteration of location of some of the central, horizontal struts. There are also some concerns with the steel channels that are required for the new floors; the Design and Access Statement identifies that these are reversible, but it is unclear how if these are required for structural stability.
- 6.10. A number of changes have been made to the proposed number and location of rooflights and it has been demonstrated that historically there were a number of rooflights on the building that have since been removed. In comparison to the previous application the rooflights are more logically arranged and will have less of a visual impact, but still appear overly large where there are two sets of roof lights together. Insufficient information has been submitted to demonstrate that the building is no longer viable in office use and therefore there is no justification for the harm caused to the historic fabric through the proposed alterations to the building.
- 6.11. CDC STRATEGIC HOUSING: **No objections.** Policy BSC3 of the Cherwell Local Plan will carry a contribution of 7.5 affordable units, which we would usually round up to 8 units. However due to the nature and design proposed in this case we have previously agreed a commuted sum payment in lieu of on-site provision. Based on current policy a commuted sum would be calculated as the residual land value with 100% market housing minus the residual land value with the affordable housing requirement.
- 6.12. The applicant has stated that provision of affordable housing is not viable, and has submitted a financial viability assessment. This has previously been agreed with housing. The applicant has confirmed in their Planning Statement that they remain willing to meet the commuted sum which has been previously agreed with the Housing Officer ie: this will be based on the difference between the Residual Land Value of the site without affordable housing less the Residual Land Value with affordable housing.
- 6.13. CDC ENVIRONMENTAL PROTECTION: **No objections** subject to conditions on land investigation and provision of Electric Vehicle charging points.
- 6.14. CDC BUILDING CONTROL: **No objections.**
- 6.15. CDC LANDSCAPE: Request contribution for off-site play improvements. A landscaping scheme should also be provided to the front and rear areas.

- 6.16. BANBURY CIVIC SOCIETY: **Object.** The proposal still unacceptably harms the listed building in that it fails to preserve the large floorplates that are so characteristic of the building's original use; still fails to expose the fine and innovative roof structure across the full width of the building at any point (including the proposed atrium); and still provides inadequate detail about the degree to which the roof structure will be preserved or made apparent where it coincides with new walls. A number of struts are to be removed from the roof trusses (although there is no structural study to show that the roof will still function structurally without them). The extent of new rooflights is also now all too apparent also. The previous comments and observation of 'less than substantial harm' (below) thus remain unchanged.
- 6.17. Securing the optimum viable use of the building is supported by paragraph 196 of the NPPF. With regard to the importance of listed buildings finding their optimum viable use (i.e. the use that is viable but which also causes the least possible harm), they previously stated that in order to approve an application for subdivision for residential use, the Council must be satisfied that the current use (large open-plan office space) is no longer a viable use and that a marketing exercise would be needed demonstrate this. Comments have been received on the planning applications which demonstrate that the existing use as an open plan office is still viable. The harm is therefore not justified and they maintain objection to the proposed development, notwithstanding the recent changes.

## **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 (CLP 2031 Part 1)

- ESD15 - The Character of the Built and Historic Environment
- PSD1 – Presumption in Favour of Sustainable Development
- SLE2 – Securing Dynamic Town Centres
- SLE4 – Improving Transport and Connections
- BSC2 – The Effective and Efficient Use of Land – Brownfield Land and Housing Density
- BSC3 – Affordable Housing
- ESD1 – Mitigating and Adapting to Climate Change
- ESD10 – Protection and Enhancement of Biodiversity and Natural Environment
- ESD15 - The Character of the Built and Historic Environment
- Banbury 7 – Strengthening Banbury Town Centre

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- H21 – Conversion of buildings in settlements
- C18 – Listed buildings

- C23 - Features in conservation areas
- C28 - Layout, design and external appearance of new development
- C30 - Design of new residential development
- ENV1 - Development likely to cause detrimental levels of pollution
- INF1 – Infrastructure

### 7.3. Other Material Policy and Guidance

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

## 8. APPRAISAL

### 8.1. The key issues for consideration in this case are:

- Principle of development
- Loss of employment
- Impact on heritage assets and design
- Residential amenity
- Affordable housing
- Open space
- Highway safety
- Ecology
- Other S106 matters
- Other matters

#### Principle

- 8.2. The site is located within the built up limits of Banbury and is close to the town centre which offers a wide range of services and facilities. The Cherwell Local Plan Part 1 2015 has a strong urban focus and directs new housing growth to existing towns including Banbury. It is therefore considered that the principle of utilising the building for flats may be considered acceptable in general sustainability terms subject to the matters discussed below.

#### Loss of employment land

##### *Previous Refusal*

- 8.3. The loss of site from employment use was one of the reasons for refusal on the earlier application. Essentially it was considered that the applicant had not demonstrated that the building was no longer viable as an existing office. The site was previously marketed 'to let' and 'for sale' (at different periods) for approximately a year (in total) however a new office occupier was not found.
- 8.4. However on further examination the marketing strategy was not considered to be robust as the site was marketed for sale for offers in excess of £1million whereas a formal valuation report submitted by the applicant stated the value of the site was £750,000. The site was also marketed for a potential residential development and it appeared to be marketed at a price related to its residential use rather than its authorised use as an office.
- 8.5. Furthermore it was unclear whether the building would have been refurbished prior to being rented (which would have been required to find a new occupier at the proposed rental level).

- 8.6. It was therefore concluded that as the site had been marketed significantly in excess of its value, alongside other weaknesses in the marketing strategy, that the applicant had failed to adequately demonstrate that the building was not capable of finding a new occupier for an office use. The proposal was therefore considered to conflict with Policy SLE1 of the Cherwell Local Plan and result in the loss of the economic benefits associated with retaining the building in an employment use in a sustainable location.

#### *Local Plan*

- 8.7. The site is an authorised B1(a) office and is therefore regarded as an employment site for the purposes of the Local Plan. Policy SLE1 of the Cherwell Local Plan Part 1 (2015) states that:

*In cases where planning permission is required existing employment sites should be retained for employment use unless the following criteria are met:*

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

*Regard will be had to whether the location and nature of the present employment activity has an unacceptable adverse impact upon adjacent residential uses.*

*Regard will be had to whether the applicant can demonstrate that there are other planning objectives that would outweigh the value of retaining the site in an employment use.*

- 8.8. It goes onto state that new dwellings will not be permitted within employment sites except where this is in accordance with specific site proposals set out in this Local Plan.

#### *National Planning Policy Framework*

- 8.9. Since the earlier application on the site the revised NPPF (July 2018) has also been published and is a material consideration in determining planning applications. Paragraph 121 relates to proposals where the site is not specifically allocated for a use in a local plan but is currently used for such purposes (such as the current application site). This states:

*Local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:*

*a) use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework;*

- 8.10. Paragraph 213 of the NPPF advises that existing policies should not be considered out of date purely because they were adopted prior to the NPPF and due weight

should be given to them according to their degree of consistency with the NPPF. In this respect it is noted that paragraph 121 falls within the chapter of the NPPF which encourages making effective use of land. The Council can demonstrate a 5 year land supply and as such are already meeting the 'identified housing needs' without the site and therefore it is considered that paragraph 121 is not applicable to the development in the context of meeting the identified housing need.

- 8.11. Furthermore SLE1 seeks to support the objective of making effective use of land and supports alternative uses of employment land where a number of criteria are met including evidencing that sites will not likely to be used for employment purposes or by having regard to other planning objectives that would outweigh the value of retaining the site in an employment use. Policy SLE1 does not strictly prohibit the loss of employment sites, but, rather allows for the opportunity to demonstrate whether changes in economic circumstances or other objectives outweigh the loss of employment land. It is therefore considered that SLE1 is fully compliant with the NPPF and is capable of carrying significant weight in planning decisions.

*Applicant's justification on this revised application*

- 8.12. Since the earlier refusal the applicant has provided further information and undertaken a further period of marketing. This includes an analysis of the local office market in Banbury from a local agent who has extensive experience of the office market in Banbury. In summary they state there is 'average' demand for office accommodation in the town and indicates that the listed status of the building, higher costs, lack of flexibility and limited parking makes the building less attractive to potential occupiers. They estimate that there is 120,000sqft (of a total of 971,000sqft) of office floor space currently available in Banbury. They consider that the Malt House is not a significant property in the Banbury office market and the loss of the building would have no significant impact upon the availability of office space in Banbury or the district. They also state that the limited interest shown in the extensive marketing demonstrates the property does not suit modern day office requirements and suggests that these premises do not perform an important role in the supply of employment space in the district.

*Marketing carried out*

- 8.13. In relation to the further marketing of the building, the building has been marketed at £750,000 including boards on site, mailing to client list, website advertising and being included in White Commercial Office Availability Flyer. The marketing price is in line with the previous formal valuation submitted by the applicant and is therefore more likely to attract interest from office occupiers. However the length of the marketing is a weakness (as it only commenced in May 2018 onwards) particularly in light of other information provided by the applicant indicating the average time taken between marketing and sale/let of properties in Banbury is approximately 12 months with many properties being on the market a longer period prior to sale/let. Furthermore the applicant has undertaken significant further works to the inside of the building since the earlier refusal, including removal of ceilings and internal walls, which has resulted in the condition of the building being significantly worse. This is likely to detrimentally impact on its value and its desirability to attract an office occupier.

*Results of Marketing*

- 8.14. However notwithstanding the above weaknesses, four offers have been made to buy the building and one party has also shown interested in leasing the building although this does not appear to have been pursued by the applicant. Two offers

were significantly below the advertised price at £350k and £500k and were discounted for that reason. A further offer of £650k was made which was rejected by the applicant and not progressed further.

- 8.15. The other party who made offers on the building has directly commented on the latest planning application. They are a local company who state they have been looking for larger office premises in Banbury and found very few offices of this size (8,000 – 12,000sqft) with good parking, open plan working environment, historic character, and close to the town centre and train station. Despite being shown around the building and making 3 offers (1 below asking price, 1 at asking price and 1 substantially higher than asking price (£900k) all were refused. They have stated the 3<sup>rd</sup> offer remains open and they claim to be ready to proceed with the purchase. They state that they were informed that the seller will only accept offers in excess of £1.8 million. They also state in their view the owner was clearly not interested in pursuing a sale as an office. They have also stated that removing such office space would increase the likelihood of their company moving it's highly educated and skilled workforce to another town or city and without good offices and innovative growing companies, the vitality and viability of the town centre of Banbury harmed.

#### *Assessment*

- 8.16. Given the above it is considered that the proposal conflicts with the criteria in policy SLE1 as the applicant has not demonstrated through marketing that the building is redundant or demonstrated that the existing employment use is not economically viable. There is no obligation for the applicant to accept or pursue offers as a result of the marketing exercise and it is acknowledged that not all offers will result in sales. However it is considered that to demonstrate that the building should not be retained in employment use under policy SLE1 there is a requirement to fully explore offers in a serious manner in view of retaining the employment use. Whilst it is acknowledged there is other office accommodation vacant in the town centre there are also concerns that the proposal would impact on limiting the diversity of employment land in the town particularly given the relatively large size and open plan nature of the building. It is noted that regard has to be had to all 3 bullet point criteria in Policy SLE1 and having regard to the 3 criteria the proposal is considered to conflict with this policy.
- 8.17. In relation to the other criteria of Policy SLE1 the existing employment use does not appear to have a significant adverse impact on the adjacent residential uses and officers are not aware of any such complaints. Whilst the proposal would lead to reuse of previously development and the benefits of providing 25 new dwellings in a geographically sustainable location it is not considered that given the Council's ability to demonstrate a 5 year land supply of housing site, the proposal provides sufficient other planning objectives to outweigh the value of retaining the site in an employment use and the long term maintenance of the listed building could equally be achieved by finding a new employment use for the building.
- 8.18. Officers do not consider there are any obvious shortcomings why the building could not be continued to be used as an office and the attractive appearance of the building, availability of on plot parking, proximity to the town centre and flexibility of the office space are likely to be attractive features to some future occupiers. This is supported by the enquiries made.
- 8.19. Based on the information provided the proposal is therefore considered to conflict with Policy SLE1 of the Cherwell Local Plan and result in economic harm from the loss of employment use in a sustainable location.

#### Impact on heritage assets and design

- 8.20. The site lies within the Banbury Conservation Area and is also a Grade II listed building.

*Policy, guidance and legislation*

- 8.21. The NPPF advises local planning authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. It also states when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation irrespective of whether any potential harm amounts to substantial harm or less than substantial harm to its significance and requires any harm to have clear and convincing justification. It goes on to state that where development proposals will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including securing its optimum viable use. Policy ESD 15 of the Cherwell Local Plan echoes this advice. Furthermore Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is given to these matters.
- 8.22. Saved Policy H21 states that within settlements the conversion of buildings to dwellings will be treated favourably unless it would detrimentally impact on its historic significance. This is subject to other policies in the plan. Policy ESD15 of the Cherwell Local Plan states that new development will be expected to complement and enhance the character of its context.

*Significance of the listed building*

- 8.23. The application is accompanied by a Heritage Statement which states, '*As a result of the several phases of quite radical internal changes to the building, the key elements in heritage terms of the building are the external shell – particularly the façade to St John's Road – and the broad roof structure with its very unusual and ambitious trusses. The rest of the interior is not considered to be of any great heritage value*'.
- 8.24. The Conservation Officer has also noted that the core significance of the building lies in its roof structure with its trusses spanning the width of the building and the 'surprisingly grand design' of the façade of the building. The design is unusual for a maltings in having just 2 floors, a large number of windows and an elaborate façade.
- 8.25. Given the changes to the buildings over the years there is minimal surviving visible evidence of the functional operation of the building however Banbury Civic Society and the Association for Industrial Archaeology have highlighted in the earlier application that the still largely open plan nature of the building also contributes to its significance as this preserves some of the character of its commercial use.

*Harm caused by previous scheme*

- 8.26. In the earlier application it was considered that the harm caused by the development through the introduction of a significant number of roof lights, internal alterations to the roof structure including loss of historic fabric, and intensive subdivision of internal spaces would all lead to harm to the key elements of the significance of the listed building which were not outweighed by the benefits of the scheme or justified particularly in light of the officers conclusions that the existing use of the building as an employment use may still be viable.

*Key heritage consideration*

- 8.27. Whilst the internal alterations do not require planning permission in their own right, the alterations proposed are a product of the residential conversion and therefore need to be given due consideration. In this regard it is important to note the key element of significance relating to the internal part of the building is the roof structure with its trusses which extend the depth of the building and are noted to be usual and ambitious for the age of the building.

#### *Impact on Roof Structure*

- 8.28. The plans remain broadly similar to the earlier refused proposals. They have been developed in order to minimise the alteration to the roof structure as far as possible within the constraints of the applicant's desired quantum of development and seek to retain visibility of the roof structure where possible. This has been done by placing the new internal walls either side of the roof structure so the roof structure would remain visible within the building and not being totally concealed in new walls. A number of alterations are proposed to the roof structure to accommodate the use including:

- Cutting and removing the purlins in the location of the roof lights to allow for the roof lights to be inserted.
- At second floor level a number of the existing timber struts are situated at 1.7m above floor level and these are proposed to be cut and raised to allow access through them. Where this is occurring the end sections will be retained to allow the original roof structure can be read.
- Removal of a significant proportion of the two central purlins in the roof running through the proposed apartments at head height at second floor level. Part of this will be retained in the central atrium.
- Removal of a number of almost vertical struts in at second floor level to enable access through the flat although these are modern additions.
- Vents and roof lights are proposed on the flat roof element of the building.

- 8.29. All these elements result in some harm to the fabric and form of the roof structure which is a key element of significance to the building. Further harm is caused to the structure and fabric of the roof through works required to provide the additional floor space at 2<sup>nd</sup> and 3<sup>rd</sup> floor level including the insertion of channels to the existing trusses to allow for the insertion of the joists for the proposed floors. This would impact on the fabric of the roof and along with the proposed new internal walls would conceal elements of the existing complex roof structure in more permanent way than the former suspended ceiling did.

- 8.30. The applicant considers that a significant benefit of the scheme would be the removal of the suspended ceiling of the office to allow some of the trusses to be visible to the apex of the roof within the building. However the full width and extent of any truss in the building is not exposed at any point within the building and the more intensive subdivision of the space in other parts of the building restricts visibility of the existing trusses. Whilst it is accepted that in some locations within the building the trusses will be more visible than at present by users of the building, it is important to note that visibility and significance in heritage terms are very different concepts, and this is not considered to outweigh the identified harm.

#### *Internal subdivision*

- 8.31. Whilst the existing internal division of spaces is entirely modern as noted above the wide open spaces of the building are contribute to the significance of the building as a former malt house and its commercial use. The residential conversion will lead to a much more intensive subdivision of the internal spaces than present in the office

which would result in harm to the commercial character of the heritage asset and the more open nature of the existing roof structure where its complexity and scale can be understood.

#### *Steel Support frames*

- 8.32. A number of steel support frames would need to be inserted in the building to support the additional load from the new floors. These would be bolted to the existing first floor concrete floor structure and bolted to the underside of the existing trusses. In the atrium they would be visible however elsewhere it is proposed they would be concealed in the walls.

#### *Rooflights*

- 8.33. The number and arrangement of the roof lights proposed was also a concern in the earlier application. Further investigation has been undertaken by the applicant and the position of historical roof lights has been discovered. There is also evidence on some of the original rafters that indicate they were covered by lath and plaster at some point.
- 8.34. The proposal would lead to the removal of a number of modern roof lights which currently exist on the building and are arranged in a rather ad hoc arrangement and do not positively contribute to the significance of the building.
- 8.35. The proposed arrangement of the new roof light is less harmful than the original proposal as the arrangement restores the regularity to the roof scape which previously existed and many of the roof lights will occupy the position of historic roof lights. However the number and size of roof lights is still considered to be significant and result in harm to the external appearance of the building by dominating the roof scape which is another area of key significance.

#### *New windows*

- 8.36. The proposal includes a number of new windows to the rear and side elevations of the buildings. There is no objection in principle to these alterations and they generally respect the character and form of the existing building with some utilising historic arrangements. There are some concerns regarding the style of the new new/alterd door openings on the rear elevation of the building which upset the balance of the building however, revised details of these could be secured by condition to ensure there design is more in keeping with the 12 pane sash windows which characterise the building if the development was considered to be acceptable in all other regards.

#### *Parapet and pediment*

- 8.37. The applicant has also stated that the proposal would lead to the rebuilding of the presently degraded parapet and central pediment however this benefit is not product of the change of use and could be undertaken separately if required.

#### *Optimal viable use of the building*

- 8.38. In considering the heritage merits of the scheme securing the optimal viable use of the building is also an important consideration. The Planning Practice Guidance provides guidance on what a viable use of a heritage asset is and how it is to be taken into account in planning decisions (Paragraph: 015 Reference ID: 18a-015-20140306). It notes that putting heritage assets to viable use is likely to lead to maintenance and long term conservation and it is important that any use is viable,

not just for the owner, but also the future conservation of the asset. For the reasons set out above regarding the loss of the employment use, the use of the building as an office is still considered viable.

- 8.39. Whilst it is accepted that the use of the building for residential use may also be a viable use the PPG advises that if there is a range of alternative viable uses, the optimum use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes. It also notes that the optimum viable use may not necessarily be the most profitable one.
- 8.40. In this case the optimal viable use of the building is considered to be the existing office uses as this would allow the open plan nature of the building to be retained and also enable the existing significant roof fabric of the building to remain. Officers also do not consider there are any compelling reasons why the use of the building as an office would not be maintained to the same standard as the building in residential use as alluded to by the applicant and therefore the use of the building as an office is considered to be consistent with the long term conservation of the building.

#### *Conclusion and level of harm*

- 8.41. The applicants heritage assessment concludes by stating that if there is any harm resulting from the works, it is 'at the lowest end of the 'less than substantial' spectrum and considered negligible'.
- 8.42. However officers disagree with this and consider that the harm stemming from the loss of fabric to the roof structure, alterations to the roof structure, intensity of the subdivision of the space, the more permanent nature of the concealment of the roof and excessive number of roof lights would result in a more significant level of harm than the applicant conclude.
- 8.43. It is important that the harm is to an area of the building which is key to the significance and historic interest of the heritage asset. In light of the conclusions reached that the existing use of the building is viable and the loss of employment land is not justified it is not considered that there is clear and convincing justification or other benefits to outweigh this harm to the heritage asset and the substantial weight the harm carries. The proposal is therefore considered to be contrary to Policy ESD15 and advice in the NPPF in this respect.

#### Residential amenity

- 8.44. Both the NPPF and Policy ESD15 of the Local Plan Part 1 seek to ensure development proposals provide a good standard of amenity for both existing and proposed occupants of land and buildings.

#### *Noise and disturbance*

- 8.45. The change of use of the building is not considered to significantly impact on the amenity of the neighbouring properties by virtue of level of activity or disturbance given the authorised use as an office would already generate relatively high levels of movement.

#### *Overlooking*

- 8.46. In the earlier application concerns were raised with the applicant regarding the existing and proposed windows/roof lights on the western elevation of the building

which directly overlook the rear garden of the adjacent properties. It is acknowledged that many of these windows already exist however the nature of the proposed use is likely to result in further levels of overlooking at certain times of the day and at weekends which would be more intrusive to the neighbouring properties.

- 8.47. In order to mitigate this impact to some extent the lower part of the sash windows can be conditioned to be obscurely glazed which would provide more limited views into the neighbouring garden but also allow for outlook through the upper panes to future residents which on balance is considered to be acceptable. The other new openings on the building are not considered to impact significantly on the amenity of the neighbouring properties.

#### *Amenity/living conditions of proposed flats*

- 8.48. The proposed dwellings are all considered to be of an adequate size to provide a good standard of amenity. The windows to the ground floor flats (unit 1 and 2) would face directly onto the parking areas to the front of the building which is far from ideal from a residential amenity perspective in terms of privacy, outlook and noise and disturbance, but given that this is an existing parking arrangement on balance this is considered to be acceptable.

- 8.49. A number of the proposed flats have windows facing into the central atrium and officers have concerns that residents and visitors would be able to view directly into these flats whilst using the communal areas which are provided in the building. Whilst these windows are advantageous to the amount of light received in the flats it is considered they would need to be fitted with opaque glazing to ensure the future residents had a good standard of amenity in terms of privacy. This can be controlled by condition. On balance the amenity of the future residents is considered to be acceptable.

#### Affordable Housing

- 8.50. Policy BSC3 of the Cherwell Local Plan Part 1 states that all developments that include 11 or more dwellings (gross) will be expected to provide at least 30% of new housing as affordable homes on the site. This provision expects 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms such as shared ownership. This would equate to 7.5 units in the scheme. It states that financial contributions in lieu of on-site provision will only be acceptable in exceptional circumstances.
- 8.51. In this case as the site is being treated as a single block of flats with a relatively high provision of communal facilities (leading to additional service charges) the Housing Officer had requested a commuted sum for affordable housing be sought rather than on site provision.
- 8.52. When the earlier application was originally submitted the applicant made no provision for affordable housing and submitted a number of viability appraisals in order to justify this. Officers did not agree with the way the applicant had assessed the existing site value which was a key component in making the scheme viable or not.
- 8.53. However, the applicant agreed to pay a commuted sum to the provision of affordable housing based on the difference between the residual land value of the site without affordable housing less the residual land value of the site with affordable housing which amounts to £115,724. This is the method outlined in the Affordable Housing Viability Study Update Report 2013 which formed part of evidence based for the Local Plan. Given the particular circumstance of this case the housing

officer has agreed to this. This would need to be secured through a Section 106 agreement. The proposal is therefore considered to comply with Policy BSC3 of the Local Plan.

#### Highway safety

- 8.54. The application site is situated approximately 160m walking distance to the southern edge of the designated town centre in the Local Plan. The town centre provides a wide range of services and facilities for residents and opportunities to use public transport. The proposal provides 22 parking spaces and 39 cycle parking spaces.
- 8.55. The proposed access to the parking areas already exists and is considered to be acceptable subject to further details on the operation of the gated access to ensure there is sufficient width available when the bin collection point is in use. This can be controlled through condition.
- 8.56. In relation to the parking requirement the highway authority indicated on the earlier application that when assessed against OCC's parking standards the proposal would require between 30 and 37 parking spaces depending on whether spaces were allocated or unallocated. It is noted that the Parking Standards used to calculate the parking requirement cover the whole of the area they define as 'urban' which does not take account of the proximity of the site to the town centre and would be applicable for the whole of Banbury. In order to justify a lower parking requirement that applicant previously provided census data which covers the application site and the surrounding town centre area. This shows that existing car ownership in the locality at the time of the census (2011). Taken this higher figure and applying it to the current development it would require 19 parking spaces for residents theoretically leaving 4/5 spaces for visitors. The Council accepted this argument and did not refuse the application on this basis.
- 8.57. The provision of the cycle parking and car parking can be secured by conditions. The LHA raised concerns that the bins would need to be pulled approximately 35m to allow collection. The applicant has indicated this would be undertaken by a caretaker and given the constraints of the site this is considered to be acceptable and a refuge management plan can be secured by condition.

#### Other matters

##### *Public open space and amenity area*

- 8.58. Policy BSC10 requires new residential development to contribute to open space, sport and recreation provision commensurate to the need generated by the proposals. It goes on to state that the level of open space, and its management and maintenance, will normally be required to be provided on site in accordance with BSC11 of the Cherwell Local Plan 2015. Given the scale of the proposal in this case the development would require a general green space and amenity area.
- 8.59. In the current case there is a green space to the north of the building which would be provided as an amenity space for the use of residents. This would appear to meet the needs of the residents and would be required to meet the requirements of Policy BSC11 for open space. The management of this space would need to be provided for and could be controlled through a condition. It is noted that there is an extant planning permission for a new dwelling on this part of the site and if the current proposal were to be granted a planning condition/legal agreement would need to ensure this permission was not implemented as without this space the proposal would conflict with the requirements of the Policy BSC11.

### *Biodiversity*

- 8.60. Policy ESD10 seeks to protect biodiversity and the natural environment. A bat survey has been undertaken and found no evidence of bat roosting within the building. Subject to conditions requiring ecological supervision of certain activities and biodiversity features including bird and bat boxes the Councils ecologist is satisfied with the proposal.

### *Drainage*

- 8.61. Details of drainage could be provided by condition and given the type of accommodation being proposed OCC have not requested an education contribution

### *Contaminated Land*

- 8.62. Given the previous use of the site land investigation would be required to ensure that any remedial work require for residential use was undertaken and this could be secured by condition.

### *Infrastructure*

- 8.63. Policy INF1 seeks to ensure appropriate infrastructure is provided to support growth. Since the earlier application the Developer Contributions SPD has been adopted. In the current application Oxfordshire Clinical Commission Group have requested a contribution of £21,600 towards primary medical care infrastructure. Further justification of this request have been made to the OCCG and details will be reported to committee to understand whether it meets the statutory tests. The applicant has indicated, subject to suitable justification, they would be willing to pay this contribution.

## **9. PLANNING BALANCE AND CONCLUSION**

- 9.1. The planning system requires social, economic and environmental benefits to be sought jointly in making planning decisions and reinforces the plan-led basis of the planning system to ensure sustainable outcomes.
- 9.2. The proposed development would result in the loss of an existing employment use. Based on the evidence submitted it is not considered that the loss of employment use is justified and it is considered there is a reasonable prospect of the site being occupied for employment use. This is evidenced by an offer on the building. The development would therefore conflict with Policy SLE1. The proposal would also result in harm to the listed building through the alterations to the historic roof structure, intensity of the subdivision of the space and the more permanent nature of the concealment of the roof structure. Furthermore the number of size of roof lights is also considered to be harmful. Given that the roof is a key element of the significance of the building and having regard to the statutory requirement this harm is considered to carry significant weight. The use of the building as an office is considered to be the optimal viable use for the site in heritage terms and given the conclusions regarding the retention of the existing employment use, this harm to the heritage asset is not considered to be supported by clear and convincing justification. The proposal will lead to the provision of a number of benefits including the provision of new housing in a sustainable location and the economic benefits associated with the construction works and the new homes bonuses. It would also reuse of an existing building and brownfield land. However these benefits are not considered to outweigh the conflict with the development plan in relation to the loss

of employment land or the harm to the core significance of the listed building. It is therefore recommended that planning permission be refused.

#### **10. RECOMMENDATION**

That permission is refused, for the following reason(s):

1. The applicant has failed to demonstrate through a robust marketing exercise that the site is no longer viable to be retained for its existing employment use. The proposed development would therefore lead to the unjustified loss of employment land in a sustainable location and result in economic harm contrary to Policy SLE1 of the Cherwell Local Plan Part 1 (2015) and advice in the NPPF.
2. The proposed development would result in less than substantial harm to the significance of the listed building and conservation area through alterations to the roof to provide the residential accommodation, subdivision of the internal space and also through the number and extent of roof lights proposed on the building. This harm is not supported by clear and convincing justification and it is not considered, based on the evidence provided, that residential use of the building is the optimum viable use of the building. The social and economic benefits arising from the scheme would not outweigh this harm. The proposal is therefore contrary to Government guidance contained within the National Planning Policy Framework, Policy ESD 15 of the Cherwell Local Plan 2011-2031 and saved Policy C18 of the Cherwell Local Plan 1996.

CASE OFFICER: James Kirkham

TEL: 01295 221896