

**Case Officer:** Emily Shaw

**Applicant:** Cherwell District Council

**Proposal:** Change of use from A1 with ancillary A3, to a sui generis/mixed use (at the ground floor only); comprising use classes A1, A3, A4, A5, D1 and D2. New toilet provision for staff.

**Ward:** Banbury Cross and Neithrop

**Councillors:** Councillor Hannah Banfield, Councillor Surinder Dhesi and Councillor Cassi Perry

**Reason for Referral:** Application affects Council's own land and the Council is the applicant.

**Expiry Date:** 24 September 2019      **Committee Date:** 19 September 2019

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

### **RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS**

#### **Proposal**

This application relates to unit 36-37 Castle Quay, previously occupied by BHS and currently a vacant unit and seeks planning permission for the change of use from retail (A1 use class) with ancillary café, to a sui generis/mixed use (at ground floor only); comprising use classes A1, A3, A4, A5, D1 and D2. The application also includes new toilet provision for staff which will be located near to the new customer toilet facility approved under 19/00535/CLUP.

#### **Consultations**

No consultees have raised **objections** to the application.

The following consultees have raised **no objections and commented** on the application:

- OCC Highways – Planning condition to ensure existing pedestrian routes remain open for public pedestrian use at all times during hours of operation. There has been no assessment carried out to demonstrate the additional number of peak hour trips compared to the existing use. However, it is estimated that this will be minimal as most of the additional trips will be shared with existing retail trips or made at off peak times.
- CDC Building Control – Proposals need to provide access in line with Part M
- Banbury Town Council – **no objections**

No letters of support have been received.

#### **Planning Policy and Constraints**

The application site lies within Banbury Town Centre and therefore Policy Banbury 7: Strengthening Banbury Town Centre is relevant in the assessment of this application. Policy Banbury 7 supports shopping, leisure and other 'Main Town Centre Uses' in this area. The Banbury Canal Conservation Area lies immediately to the north east of the site, the site however does not lie within the Conservation Area.

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

**Conclusion**

The key issues arising from the application details are:

- Principle of development
- Proposed layout, hours of operation and management
- Highway Impact and Pedestrian Connectivity

The report looks into the key planning issues in detail, and Officers conclude that the proposal is acceptable subject to conditions.

**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 comprises unit 36-37 Castle Quay, formerly British Homes Stores, and is located within the town centre of Banbury within the Castle Quay Shopping Centre. The application site comprises a unit measuring a floor space of 16,429 square metres with an existing retail use with ancillary café. The unit has been vacant for a number of years. The application site has an internal frontage into the shopping centre to the south and external frontages to the north east and north west facing the Canal and the adjacent multi storey car park.

**2. CONSTRAINTS**

2.1 The Banbury Canal Conservation Area lies immediately to the north west of the application site and Flood Zone 2 lies immediately to the north and north west of the application site.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks planning permission for the change of use of the ground floor of unit 36-37 Castle Quay. The current authorised use of this unit is retail (A1) with ancillary café (A3).
- 3.2. The proposed use is a sui generis mixed use comprising retail, café, restaurants, hot food takeaway and a community/event space within fixed units totalling 6929 square feet and broken down as follows:

<b>Proposed uses within fixed units shown on drawing number TB_19_1683 P101 01. (percentage of total floor space)</b>	
Retail (A1)	1623 Square feet (10%)
Restaurant and café (A3)	1093 square feet (6%)
Restaurant and café/ Drinking	2453 Square feet (15%)

establishments (A3/A4)	
Hot food take-away (A5)	659 square feet (4%)
Non residential community space/events space (D1/D2)	1101 square feet (7%)

The proposal also comprises a sui generis mixed use and flexible use of the central floor space area (total floor space 9500 square feet). The proposed total tradeable area proposed will comprise up to 2400 square feet of trading space of A1, A3, A4, A5, D1 and D2 in mobile units as well as more permanent lock up units and occasional temporary event uses within the space.

- 3.3. The application is supported by a supplementary statement which provides an assessment of anticipated vehicle trips to the unit compared with the authorised retail use. The statement concludes that trip generation to the unit will not significantly change compared to trips generated by the existing retail use. The statement also provides a further breakdown of the retail 'carts' proposed and advises that; 9no 97sq/ft lock up kiosks, 4no 67sq/ft stalls and 2no, retail carts are proposed within the central open area and will occupy a maximum of 25% of the total 9500 square feet of the central area. The unit is proposed to be open for trading between the hours of 9am and 10pm (with staff access to 11pm). As the proposed uses will trade outside of the Castle Quay Centre opening hours the space is proposed to be accessed independently from the shopping centre by external entrances from the north west and north east but also from within the centre from all entrances. A security presence will be on site during all opening hours.
- 3.4. This application is for the change of use of unit 36 and 37 only. Planning application 19/01658/CDC deals with the impact of the proposed external alterations which include new plant to the roof, ventilation louvres, downpipes and internal drainage associated with the change of use of this unit and this is a separate item on this Committee agenda.

#### 4. RELEVANT PLANNING HISTORY

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

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
19/00535/CLUP	Certificate of Lawfulness for Proposed Development - Internal works for the relocation of public toilet provision to a new location within the existing shopping centre and external alterations to install 2 louvres to external north eastern elevation facing service yard.	Permitted 31.05.2019
18/01426/F	Installation of new entrance doors in north western elevation of former BHS unit to allow pedestrian access to shopping centre from south multi storey car park	Permitted
	Reserved Matters Application to	

17/00284/REM	16/02366/OUT across the whole development site is sought. Application for approval of reserved matters for scale, layout, appearance and landscaping.	Permitted 26.09.2018
16/02366/OUT	Removal/ Variation of conditions 4 (list of approved drawings) and 9 (enhancement of River Cherwell) to 13/01601/OUT - Condition 4 to be varied to reflect alterations in the access and servicing strategy for Block C, with variations to maximum deviations in block and Condition 9 to be removed as no longer justified.	Permitted 1.06.2018

## 5. PRE-APPLICATION DISCUSSIONS

- 5.1. No pre-application discussions have taken place with regard to this proposal.

## 6. RESPONSE TO PUBLICITY

- 6.1. This application has been publicised by way of a site notice displayed near the site, 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 14.09.2019, although comments received after this date and before finalising this report have also been taken into account.
- 6.2. COUNCILLOR SURINDER DHESI: **comments received.** The proposals are welcomed and would also welcome additional seating for the elderly and waste bin provision within the shopping centre.

## 7. RESPONSE TO CONSULTATION

- 7.1. 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.

### TOWN COUNCIL

- 7.2. BANBURY TOWN COUNCIL: **no objections**

### CONSULTEES

- 7.3. THAMES VALLEY POLICE CRIME PREVENTION DESIGN ADVISOR: **no objection, raised the following comments.** Concerned that the addition of potentially late-night drinking establishments (A4 use) and take away (A5) uses in this location could add to existing levels of crime and anti-social behaviour experienced locally, however these uses are a small proportion of the overall unit so do not object. Confirmed happy with proposed hours of operation. External lighting and security measures may need improving in this area.

- 7.4. OCC HIGHWAYS: **No objection subject to:** Planning condition to ensure existing pedestrian routes remain open for public pedestrian use at all times during hours of operation. There has been no assessment carried out to demonstrate the additional number of peak hour trips compared to the existing use. However, it is estimated that this will be minimal as most of the additional trips will be shared with existing retail trips, or made at off peak times.
- 7.5. CDC BUILDING CONTROL: **comments.** The toilet provision needs to provide a disabled facility.
- 7.6. CDC LICENSING: **no comments.**

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. 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)

- Policy PSD1: Presumption in Favour of Sustainable Development
- Policy SLE 2: Securing Dynamic Town Centre
- Policy ESD15: The Character of the Built and Historic Environment
- Policy ESD16: The Oxford Canal
- Policy Banbury 7: Strengthening Banbury Town Centre

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

- Policy S2 – Proposals for retail development in the shopping centre and town centre, Banbury
- Policy C28 – Layout, design and external appearance of new development
- Policy C29 – Appearance of development adjacent to the Oxford Canal

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF) – Section 7 ‘Ensuring the vitality of Town Centres’ and Section 12 ‘Achieving well designed places’
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Banbury Vision and Masterplan

### 8.4. Council Corporate Priorities

Cherwell District Council’s Business Plan for 2019-20 sets out the Council’s three strategic priorities which form our overarching business strategy. Below these are the key actions for the year 2019–20. This is a strategy which looks to the future taking into account the priorities and aspirations of the communities who live and work in the district.

The three corporate priorities are to ensure the District is “Clean, Green and Safe”, that it supports “Thriving Communities & Wellbeing”, and is a District of “Opportunity & Growth”. All three priorities are of significance to the determination of planning applications and appeals. Below these priorities, the key actions which are of most relevance to planning applications and appeals are: (1) deliver the Local Plan; (2) increase tourism and increase employment at strategic sites; (3) develop our town centres; (4) protect our built heritage; (5) protect our natural environment; (6) promote environmental sustainability; (7) promote healthy place shaping; (8) deliver the Growth Deal; (9) delivery innovative and effective housing schemes; and (10) deliver affordable housing.

The remaining key actions may also be of significance to the determination of planning applications and appeals depending on the issues raised.

The above corporate priorities are considered to be fully compliant with the policy and guidance contained within the National Planning Policy Framework and National Planning Practice Guidance.

## **9. APPRAISAL**

9.1. The key issues for consideration in this case are:

- Principle of development (incl. heritage impact)
- Proposed layout, hours of operation and management
- Highway Impact and Pedestrian Connectivity

### Principle of Development (incl. Heritage Impact)

- 9.2. The National Planning Policy Framework (NPPF) sets out the purpose of the planning system which is to contribute to the achievement of sustainable development. The planning system has three overarching objectives in relation to sustainable development and these are; an economic objective, a social objective and an environmental objective which are to be pursued in a positive way. At the heart of this is a presumption in favour of sustainable development. Paragraph 85 of the NPPF seeks to ensure viable town centres are achieved through locating main town centre uses within town centres and this proposal meets this objective. Paragraph 127 sets out considerations to be had in relation to new developments and good quality design.
- 9.3. The application site is located within the town centre of Banbury and is located within the Castle Quay shopping centre. Policy SLE 2 and Policy Banbury 7 of the Cherwell Local Plan 2011-2031 seek to secure retail, leisure and other ‘Main Town Centre Uses’ within the town centre of Banbury. This application proposes a mixed-use town centre space comprising A1, A3, A4, A5 and D1/D2. These are all uses which meet the requirements of Policy Banbury 7 which will strengthen the town centre of Banbury by supporting shopping and leisure uses. Furthermore, the proposal seeks to operate extended hours beyond the opening of the current shopping centre and will therefore develop and improve leisure offering for the town in accordance with the Local Plan.
- 9.4. The site affects the setting of the Oxford Canal Conservation Area and therefore, Local Plan policy ESD16 is relevant and seeks to ensure that development is not detrimental to the conservation area and supports proposals which will promote transport, leisure and tourism related uses, as well as supporting enhancement of the canal’s active role in mixed used development in urban settings. Furthermore, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

(as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*

- 9.5. The application site lies within the town centre of Banbury and currently comprises a vacant retail unit. Noting that the proposal is for uses that are typically found in the town centre, the proposed use is not considered to have any material impact on the setting, character or significance of the Conservation Area.
- 9.6. The proposed change of use will bring a large central town centre unit back into use after a long period of being empty. The proposed mixed-use space will generate a vibrant day time shopping and leisure space as well as an evening leisure space which is considered to accord with the principles set out within the NPPF in relation to sustainable development, vibrant and viable town centres and attractive and safe places to live and also in accordance with the principles of appropriate town centre and canal side uses set out in Local Plan policies SLE 2, Policy Banbury 7 and Policy ESD16.

#### Proposed layout, hours of operation and management

- 9.7. This application is supported by drawing numbers TB\_19\_1683 P101 Rev. 01 and TB\_19\_1683 A101B Rev. 101 which show the proposed layout comprising 7 fixed units which will sit on the ground floor around the edge of the unit. These fixed units have a total tradable floor space of 6900 square feet. The hot food take-away unit on the north west elevation and the retail unit on the southern elevation of the unit are shown to be broken down into multiple kiosks within the defined area. In addition to the fixed units there will also be flexible retail outlets within the central area of the space up to 25% of the tradable area, which amounts to a maximum of 2400sq/ft within the central space along with a number of fixed lock-ups and flexible stalls/kiosks.
- 9.8. The proposal reuses an existing retail unit and introduces a number of leisure uses as well. The proposed change of use will introduce a day time and night time economy to this part of the town which will support the leisure uses already approved within the Castle Quay 2 development approved as part of application 16/02366/OUT and 17/00284/REM and currently under construction.
- 9.9. The application is supported by a short statement which confirms that the mixed-use space within unit 36 and 37 will, during trading times, be covered by monitored CCTV; a mobile security patrol will be undertaken regularly throughout the day; and a centre manager will be present on site during opening hours of the centre and the mixed-use space. No additional external lighting is proposed at this time, the applicant has confirmed that this will form part of a later application to seek permission for advertisements and external alterations. Thames Valley Police have confirmed they have no objections to the proposed change of use and Officers have no reason to form a different view in terms of operation and management of the proposals.
- 9.10. There are existing residential uses located to the north east of the canal at Chamberlaine Court, which comprises retirement apartments. These residential units are located on the opposite side of the canal to the proposed mixed use space. Whilst the proposed change of use will extend the hours of opening of units 36 and 37 beyond the opening hours of the existing shopping centre it is not located closer to the residential uses than the cinema and leisure uses currently being constructed as part of Castle Quay 2. The uses proposed and hours of operation proposed in this application due to their distance from existing residential uses and having

consideration for other authorised uses nearby the proposal would not adversely affect residential amenity of residents of Chamberlaine Court.

- 9.11. The uses proposed, hours of operation and management arrangements contained within this application are an acceptable form of development with no adverse impacts on the amenity of the area or neighbours, and which meets the requirements of Policy SLE 2 and Policy Banbury 7: Strengthening Banbury Town Centre of the Cherwell Local Plan 2011-2031 and Policy S2 and C28 of the Cherwell Local Plan 1996 and guidance contained within the NPPF.

#### Highway Impact and Pedestrian Connectivity

- 9.12. The proposal reuses the ground floor of an existing town centre retail unit and will provide a mix of uses including retail and leisure uses (restaurant, café and hot food takeaway). The application proposes no new vehicle accesses and the service arrangements to the unit will remain as they are at present. Pedestrian routes will be available through the centre during hours of operation between 9am and 10pm and will allow better connectivity through this part of the town and better access to the bus stops on Bridge Street.
- 9.13. No assessment has been carried out to demonstrate the number of additional peak hour trips likely to be generated compared to the existing use. However, it is likely that additional trips will be very minimal, and any additional trips will be either shared with existing retail visits, or due to the mix of uses comprising later evening uses additional trips will be made at off peak times.
- 9.14. Comments from the Local Highway Authority have raised the issue of poor pedestrian connectivity through the centre. The Castle Quay 2 development planning permission has a requirement to keep pedestrian routes through the existing shopping centre open until the development closes. This change of use application is supported by a drawing which shows the pedestrian routes to remain open during operating hours of the shopping centre as well as the new mixed-use space (Lock 29) which will be open longer than the existing centre.
- 9.15. The proposed change of use will not significantly alter the number of vehicle trips to the site and will potentially improve the pedestrian connectivity through this part of the town with better access and routes within the centre during hours of operation. The change of use is acceptable in highway safety terms and meets the requirements of Local Plan Policy PSD1 and guidance contained within the NPPF.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The proposal complies with the relevant Development Plan policies and guidance listed at section 8 of this report, and so is considered to be sustainable development. In accordance with Paragraph 11 of the NPPF, permission should therefore be granted.

### **RECOMMENDATION**

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)

#### CONDITIONS

##### **Time Limit**



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

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

### **Compliance with Plans**

2. The development shall not be carried out otherwise than in complete accordance with the approved plans and other details:
  - Application form
  - Site Location Plan – TB\_19\_1684 P-EX001 Rev. 01
  - Existing Ground Floor Plan – TB\_19\_1683 P-EX010 Rev. 01
  - Existing External Elevations – TB\_19\_1683 P-EX020 Rev. 01
  - Existing Roof Plan – TB\_19\_1683 P-EX013 Rev. 01
  - Proposed General Arrangement Plan – TB\_19\_1683 P101 Rev. 01
  - Proposed General Arrangement Plan – TB\_19\_1683 A101B Rev. 01
  - Supplementary Information Statement received by email on the 5<sup>th</sup> September 2019
  - Supplementary Management Statement received by email on the 5<sup>th</sup> September 2019
  - Proposed uses and proportion of uses schedule dated the 26.07.2019.
  - Pedestrian Access Routes – 407-OP-19 Rev. P6

unless a non-material or minor material amendment is approved by the Local Planning Authority under the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

Reason : To clarify the permission and for the avoidance of doubt.

### **Waste Bins**

3. Prior to the first use of the development hereby approved, suitably located waste bins shall be provided outside the premises and retained for public use in accordance with details to be firstly submitted to an approved in writing by the Local Planning Authority.

Reason: In order that proper arrangements are made for the disposal of waste, and to ensure the creation of a satisfactory environment free from intrusive levels of odour/litter in accordance with Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

### **External Lighting**

4. Prior to the installation of any external lighting on any part of the development hereby approved, full details of the proposed external lighting including its hours of usage, shall be submitted to and approved in writing by the Local planning Authority. Thereafter, the external lighting shall be carried out and retained in accordance with the approved details.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD 15 of the Cherwell Local Plan 2011-2031, saved

Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

### **Mix of Uses**

5. The mix and proportion of uses comprising the sui generis mixed use hereby approved shall be as detailed in the "Proposed uses and proportion of uses schedule" dated the 26.07.2019 and the premises shall be used for no other purpose, mix or proportion of uses whatsoever unless otherwise submitted to and approved in writing by the Local Planning Authority.

Reason : To safeguard the amenities of the area and to ensure the vitality of the Town Centre, in accordance with Policy SLE2, Banbury 7 and ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policies C28 and C31 of the Cherwell Local Plan 1996 and Government Guidance contained in the National Planning Policy Framework.

### **Opening Times**

6. The operational use of the premises shall be restricted to the following times:

Monday to Friday: 8:00am to 10:00pm

Saturday's: 8:00am to 10:00pm

Sunday's, Bank and Public Holidays: 10:00am to 10:00pm

Reason: To protect the amenities of nearby residents and to comply with Saved Policy ENV1 of the Cherwell Local Plan 1996.